TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 134.

ALEXANDER E. FABER AND RUDOLPH C. FABER, DOING BUSINESS UNDER THE NAME AND STYLE OF G. W. FABER, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JANUARY 15, 1909.

(21,478.)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 23, 1910.

1 *Order.*

At a Stated Term of the United States Circuit Court for the Southern District of New York, Held in the United States Court House and Post Office Building, in the City of New York, on the 28th Day of January, 1907.

Present: Hon. E. Henry Lacombe, Circuit Judge.

No. 4812.

ALEXANDER E. FABER and RUDOLPH C. FABER, Doing Business under the Name and Style of G. W. FABER,
against
THE UNITED STATES.

Order.

Upon reading and filing the annexed petition, and on motion of Hatch & Clute, attorneys for the Petitioner-, it is

Ordered, That the Board of United States General Appraisers, sitting at the Port of New York, return to this Court the record and the evidence taken by them in the matters referred to in the annexed petition and schedule, together with a certified statment of the facts involved, and their decision thereon.

E. H. LACOMBE,
United States Circuit Judge.

2 *Petition.*

United States Circuit Court, Southern District of New York.

No. 4812.

ALEXANDER E. FABER and RUDOLPH C. FABER, Doing Business under the Name and Style of G. W. FABER,
against
THE UNITED STATES.

Petition.

To the United States Circuit Court for the Southern District of New York:

Your Petitioners having complied with the Statutes in such case made and provided, are dissatisfied with the decision of the Board of United States General Appraisers, in the matter which arose within the district of this court, referred to in the Schedule below, as to the construction of the law and the facts respecting the classifi-

cation of such merchandise, and the rate of duty imposed thereon under such classification.

The following is a concise statement of Errors of Law complained of:

Errors of Law.

I. The Board of United States General Appraisers erred in sustaining the action of the collector, and in not reversing the same, and sustaining the protest of the importer.

II. The said Board erred in holding that Article VIII of the present Commercial Convention with Cuba conflicts with Article II of said Convention: and that no effect can be given to the former.

III. The said Board erred in not holding that there is no
3 conflict between said Articles and in not holding that said Article VIII is a further term of the contract providing in part that the preference granted to Cuba by said Article II shall be preserved in the event that the United States shall choose to grant to any other country more favorable rates of duty than those provided in said Tariff Act of July 24, 1897.

IV. The said Board erred in holding that said Article II is self-executing, and that said Article VIII is not self-executing.

V. The said Board erred in not holding that the said Convention was executed by the Congress of the United States of America.

VI. The said Board erred in not holding that said Article VIII was executed by said Congress.

VII. The said Board erred in not holding that the enactment of said Article VIII in express terms by said Congress created a rule of law over which the judicial department of said United States has jurisdiction, and in not holding that the courts of said United States and *that* the said Board should enforce the same.

VIII. The said Board erred in holding that the Philippine Archipelago does not fall within the intent and meaning of the terms "other countries" as used in said Article VIII, in contradistinction to the terms "foreign country" as used in said Article VIII.

IX. The said Board erred in not holding that the exception provided for in said Article VIII, namely, that sugar from the Republic of Cuba should not be admitted at a reduction of duty greater than twenty per centum of the rates provided in the Tariff Act of July 24, 1897, presupposed and contemplated that all other articles might enjoy a greater reduction in order to preserve the preference
4 granted to Cuban products by said Convention.

X. The said Board erred in not holding that the whole scope and meaning of said Convention was to grant mutual and exclusive preferential tariff benefits to the high contracting parties.

XI. The said board erred in holding that the assessment of $1.80 per proof gallon on the alcohol, covered by the protest of the importers, from Cuba was valid, and not in violation of said Commercial Convention, although the said United States admits alcohol from France, Germany, Italy, Portugal and Spain at the rate of $1.75 per proof gallon.

XII. The said Board erred in holding that the granting of prefer-

ential rate to alcohol from said countries of France, Germany, Italy, Portugal and Spain over alcohol from Cuba is not in violation of the preference granted to Cuba over all other countries under the terms of said Convention.

XIII. The said Board erred in not holding that the alcohol covered by the said protest is entitled to a twenty per centum preferential rate of duty over alcohol imported from France, Germany, Italy, Portugal and Spain into the United States.

XIV. The said Board erred in not holding that the cigars covered by said protest are entitled to the twenty per centum preferential rate over cigars imported from the Philippine Archipeligo into the United States.

XV. The said Board erred in holding that the question presented by the said protest is parallel with that which has arisen under the so-called Favored Nation clause in treaties as construed by the United States of America.

XVI. The said Board erred in holding that the benefit granted to Cuba under said Convention, for a good and sufficient consideration moving from Cuba to the United States of America, could be taken away by the said United States by special agreements or otherwise, permitting like goods from other countries to be imported at lower rates of duty than goods from Cuba paid, or that the high contracting parties intended the same, or that the Congress of the United States of America in enacting said Article VIII intended the same.

The following is a description of the importation made by your petitioners which is the subject matter of said decision, and of this petition, namely:

Schedule.

Description of merchandise.	Entry No.	Date of entry.	Number of protest.	Date of decision.
Cigars and alcohol	81180	May 17, '06	200853–11741	Jan. 22, '07

Wherefore, your petitioners pray that this Court review the questions of law and fact involved in said decision concerning the classification and rates of duty assessed upon the said merchandise, and that an order may be entered requiring the said Board to return to this Court the record and evidence taken by them, together with a certified statement of facts involved in the case, and their decision thereon; and your petitioners pray for such other or further relief as to the Court may seem just.

Dated, New York, January 28th, 1907.

ALEXANDER E. FABER AND
RUDOLF C. FABER,
Doing Business under the Name and Style
of G. W. Faber, Petitioners,
By HATCH & CLUTE,
Attorneys for Petitioners,
No. 100 *Broadway, Borough of Manhattan, New York City.*

Endorsed: U. S. Circuit Court—Filed, Jan. 29, 1907—Southern District, New York—John A. Shields, Clerk.

6 *Bond.*

Know all men by these presents, That I, Frederick W. Acton, residing at No. 121 St. Nicholas Avenue, in the City of New York, am held and firmly bound unto the United States of America, in the sum of Fifty Dollars ($50.00), to be paid to the United States of America, for the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated the 28th day of January, in the year of our Lord Nineteen hundred and seven.

Whereas, G. W. Faber, has applied to the Circuit Court of the United States, for the Southern District of New York, for a review of the questions of law and fact involved in a certain decision of the Board of United States General Appraisers, made on certain merchandise imported by him and entered in his name on the vessels and entered on the dates mentioned in the schedule filed herein.

Now therefore, the condition of this obligation is such that if the said G. W. Faber shall prosecute said proceeding with effect, and pay all damages and costs which shall be awarded against him therein, if he fails to make said proceeding good, then this obligation to be void, otherwise the same shall be and remain in full force and effect.

F. W. ACTON. [SEAL.]

Sealed and delivered and taken and acknowledged this 28th day of January, 1907.

——— ———.

7 UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Frederick W. Acton, being duly sworn, says that he resides in the Southern District of New York, in the City of New York, and that he is worth the sum of One hundred dollars ($100.00) over and above all his just debts and liabilities.

F. W. ACTON.

Sworn to before me, this 28th day of January, 1907.

[SEAL.] CHAS. T. FISH,
Notary Public, New York County.

Approved:

E. H. LACOMBE,
United States Circuit Judge.

Endorsed: U. S. Circuit Court—Filed, Jan. 29, 1907—Southern District, New York—John A. Shields, Clerk.

8 *Return.*

Return of the Board of United States General Appraisers to the Order of the Court.

United States Circuit Court, Southern District of New York.

Suit 4812.

G. W. FABER
against
THE UNITED STATES.

On Application for Review of a Decision of the Board of United States General Appraisers.

NEW YORK, *Feb.* 9, 1907.

In response to the order of the Court, said Board hereby returns, as given below, the record in the above-entitled matter, and certifies that a complete statement of the facts involved in the case, together with the decision of the Board, is embraced therein, and that no other facts were ascertained by said Board than such as are thus shown.

Specifically, the return comprises:

1. The importer's protest, No. 200853.
2. The report of the collector of customs thereon.
3. A transcript of the record of proceedings at the hearing before the Board.
4. A copy of the Board's decision, known as G. A. 6520 (T. D. 27847).

B. S. WAITE,
H. M. SOMERVILLE,
EUGENE G. HAY,
Board of U. S. General Appraisers.

9 *Protest* 200853.

NEW YORK, *April 18th*, 1906.

To the Honorable Collector of Customs, Port of New York:

Please take notice, that we protest against your decision as to the rate and amount of duties to be paid on One carboy Alcohol and One case Cigars, marked and numbered — Addressed 59—One carboy Alcohol; addressed 58—One case Cigars, etc., imported per "Esperanza," from Havana, entered by us April 2, 1906, for consumption, entry No. 81180, liquidated April 11, 1906, and claim, as reasons for our objections thereto:

That by virtue of a Convention between the United States of America and the Republic of Cuba, as amended by the Senate, and approved by the Congress of the said United States, a copy of which

is published under T. D. 24836, the said cigars are entitled to a twenty per cent. preferential rate of duty over like articles and merchandise from other countries. That like articles, from the Philippine Islands, are admitted into the said United States on payment of seventy-five per centum of the duties provided for by the Tariff Act of July 24, 1897. I claim that the said Philippine Islands are an "other country," according to the true intent and meaning of said convention, and that the said cigars are accordingly entitled to a twenty per centum preferential rate over said seventy-five per centum of said duties of said Act.

As to the said alcohol, I claim that, by virtue of the said Convention, the same is entitled to a twenty per centum preferential rate of duty over like merchandise from France, Germany, Italy, or Portugal, which said merchandise, by virtue of proclamations of the Presidents, under the authority conferred upon them by Section
10 3 of the Tariff Act of July 24, 1897, is admitted into this country at the rate of $1.75 per proof gallon, from those countries.

We pay the amount exacted under compulsion, solely to get the goods, reserving all rights.

G. W. FABER,
By HATCH & CLUTE,
Attorneys for Importers, 100 *Broadway, New York City.*

Endorsed: Custom House, New York, Apr. 20, 1906—Received.

11 *Report of Collector.*

United States Customs Service.

Port of New York.

Office of the Collector.

MAY 17, 1906.

Board of U. S. General Appraisers, Port of New York:

GENTLEMEN: I submit the protest of G. W. Faber, No. 11741, against the assessment of duty as made by this office on certain alcohol and cigars imported by him in the "Esperanza," April 2, 1906. The importer claims that the merchandise in question, being the product of Cuba, the alcohol is entitled to a twenty per centum preferential rate of duty over like merchandise from France, Germany, Italy, or Portugal, and that the cigars are entitled to a twenty per centum preferential rate of duty over like articles from the Philippine Islands.

I have to state that the merchandise in question was assessed with duty at the rates applicable under the tariff act of July 24, 1897, less the twenty per centum reduction of duties provided for in T. D. 24836.

Respectfully yours,

J. J. COUCH,
Special Deputy Collector.

3 inclosures.

Endorsed: Received by Board of U. S. General Appraisers, May 18, 1906.

12 The U. S. General Appraisers.

In the Matter of G. W. FABER.

Protest 200853.

NEW YORK, N. Y., *Sept.* 18, 1906.

Before Board No. 3.

Present: Hay, G. A.

Appearances:

For the Importer: Messrs. Hatch & Clute, by Walter F. Welch, Esq., of Counsel.

For the Government: John A. Kemp, Esq., and W. A. Robertson, Esq.

Mr. Welch offers the consulated invoice in evidence, and requests that the same be marked as an exhibit.

General Appraiser HAY: I don't think you can take a Government record, and bring it in Court and leave it.

Mr. KEMP: I would think a certified copy of it or a photographic copy would answer all their purposes. It would not do to take that out of the Government's possession, and make it part of the record.

Mr. WELCH: Counsel for the importer requests permission to introduce a certified copy of the consular invoice in this case, and of the entry and papers attached thereto.

So ordered.

13 Mr. WELCH: I now desire to offer in evidence a duly authenticated copy of the Spanish version of the 8th Article of the Convention between the United States and Cuba, made in December, 1903.

Mr. ROBERTSON: This appears in the Revised Statutes.

Mr. WELCH: Well, I will refer to that. (Examines volume handed to him by Mr. Robertson.) Counsel for the importer begs to refer to the Spanish version of Article 8 of the Commercial Convention with Cuba, as printed at page 2140 of Volume 33, Part 2, of the U. S. Statutes at Large,—Fifty eighth Congress, 1903/5.

Mr. WELCH: I also desire to read in evidence an extract from "The Foreign Commerce and Navigation of the United States for the Year Ending June 30, 1905," published by the Department of Commerce and Labor, at page 993.

Mr. ROBERTSON: No objection.

Mr. WELCH (Reading): Page 993. Imports entered for consumption—year ending June 30, 1905. Recapitulation of dutiable imported merchandise entered for consumption under reciprocity treaties now in force, with rates of duty and amounts of duty collected, etc.

From France: Articles, Spirits distilled: Alcohol (proof gallons). Rates of duty $1.75 per proof gallon. Quantities, 1.109.

From Germany: Spirits, distilled: Alcohol (proof gallons). Rates of duty $1.75 per proof gallon. Quantities 13,817.

From Italy: Articles, Spirits distilled: From grain (proof gallons). Rates of duty $1.75 per proof gallon. Quantities, 1.

14 From other materials (proof gallons). Rates of duty $1.75 per proof gallon. Quantities, 6.

From Portugal: Spirits, distilled: Other not specially provided for, manufactured or distilled. From other materials (proof gallons). Rates of duty $1.75 per proof gallon. Quantities 62.

Mr. WELCH: I should like three weeks' time to file brief.

So ordered.

Referred to General Appraiser Hay.

15 *Decision of the Board.*

(T. D. 27847—G. A. 6520.)

Cuban Treaty.

1. Preferential Tariff—Philippine Archipelago—Other Countries.

The Philippine Archipelago is not an "other country" within the meaning of that phrase as used in Article VIII of the Cuban treaty of December 27, 1903, and commodities coming from Cuba are dutiable at 20 per cent less than the rates provided in the tariff act of 1897, and not at 20 per cent less than rates provided for like commodities from the Philippines.

2. Same—Articles II and VIII, Cuban Treaty.

Article II of the Cuban treaty of December 27, 1903, being more specific in its terms, is not modified or controlled by the general provisions of Article VIII of said treaty.

3. Same—Reciprocity Agreement with France and Other Countries.

Alcohol coming from Cuba is dutiable under the provisions of Article II of the Cuban treaty at 20 per cent less than the rate provided for alcohol by the act of 1897, and not 20 per cent less than the rate provided therefor by the reciprocity agreements with France, Germany, Italy, and Portugal.

UNITED STATES GENERAL APPRAISERS,
NEW YORK, *January* 22, 1907.

In the Matter of Protests 194710, etc., of Havana Tobacco Company et al. against the Assessment of Duty by the Collector of Customs at the Port of New York.

Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

HAY, General Appraiser: These protests raise a question as

16 to the construction to be placed upon certain paragraphs of the treaty between the United States of America and the

Republic of Cuba, as the same was approved by Congress on December 17, 1903 (T. D. 24836). The protestants' contention is that, by the provisions of this treaty, certain cigars and other commodities imported from Cuba should be admitted into the ports of this country upon the payment of customs duties 20 per cent less than the rates paid upon like commodities coming from the Philippine Islands, which under existing laws, pays 75 per cent of the rates provided for in the tariff act of 1897, and that certain alcohol, by virtue of said provision, should be admitted into the ports of the United States upon the payment of customs duties of 20 per cent less than are charged upon like merchandise coming from France, Germany, Italy, or Portugal, which merchandise coming from these countries, under certain reciprocity agreements made and entered into under section 3 of the tariff act of 1897, is admitted into this country at the rate of $1.75 per proof gallon. The rates of duty applied to all of such merchandise by the collector in the cases now before us were 20 per cent less than the regular duty provided therefor by the act of 1897.

The stipulations of the treaty which touch upon the questions here under consideration are contained in Articles II and VIII. Article II reads as follows:

Art. II. During the term of this convention, all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of 20 per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 14, 1897, or as may be provided by any
17 tariff law of the United States subsequently enacted.

The pertinent part of Article VIII reads as follows:

Art. VIII. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries. (The remainder of this article relates entirely to the importation of sugar.)

The contention of the importer is that the stipulation of Article VIII that the rates of duty granted by the United States to the Republic of Cuba are and shall continue during the terms of the convention preferential in respect to all like imports from other countries, must influence and control all other stipulations of the treaty, and that the Philippine Islands are *another country* within the meaning of this article.

A question very similar to this was under consideration by this Board in the Franklin Sugar Refining Company's case, G. A. 5980 (T. D. 26189), wherein it was contended that, under the provisions of Article II, sugar coming from the Island of Cuba should be admitted at 20 per cent less than 75 per cent of the regular rate charged

upon like commodities coming from the Philippine Archipelago, by reason of the concluding language of said article, which, after fixing the rate at 20 per cent of the duty provided in the act of
18 1897, reads: "Or as may be provided by any tariff law of the United States subsequently enacted." With reference to that, the Board in its opinion said:

This clause manifestly refers to any general tariff law which may supersede the present Dingley act, and not to any special law like that governing our tariff relations with the Philippine Islands.

It was pointed out that this conclusion was sustained by the proviso of Article VIII, which has no bearing upon the case now under consideration, as it refers entirely to sugar.

In the case of Fourteen Diamond Rings v. United States (183 U. S., 179), it was held that when the Philippine Islands ceased to be Spanish they ceased to be foreign country. In De Lima v. Bidwell (182 U. S., 180) the definition given years ago by Chief Justice Marshall, that a foreign country was one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States, was reaffirmed, and the same doctrine, in a general way, has been announced in a large number of cases. The ship Adventure (1 Brock., 235; 1 Fed. Cas., 202); the boat Eliza (2 Gall., 4; 8 Fed. Cas., 455); Taber v. United States (1 Story, 1; 23 Fed. Cas., 611); United States v. Recorder (1 Batch., 218; 27 Fed. Cas., 718).

So far as it has application to the question involved in these cases, we are unable to see any difference between the phrase "a foreign country" as used in these decisions and the phrase "other countries" as used in Article VIII of the Cuban treaty. Other countries means countries other than the United States. To be a country other than the United States that country must be a country foreign to the United States—that is, a country, "exclusively without the sovereignty of the United States." The Philippine Archipelago is no more another country than Alaska, Hawaii, or Porto Rico.
19 None of them are States of the American Union; but the government under which the people of each live is prescribed by the American Congress and all are within the sovereignty of the United States. Commodities from Alaska, Hawaii, and Porto Rico are all admitted into the United States free of duty, the same as commodities from Florida are admitted into New York or Pennsylvania. It would be as reasonable therefore, to ask that the commodities of Cuba be admitted at 20 per cent less than the commodities of Porto Rico, which are admitted free of duty, as that they should be admitted at 20 per cent less than the products of the Philippine Archipelago, which are admitted at 75 per cent of the duties prescribed by the act of 1897.

This, we think, is conclusive and disposes of the importers' contention so far as the same is based upon the preferential Philippine tariff. But there is another aspect of the case which we think not only disposes of that contention, but also of the contention that the alcohol covered by the protests should be admitted at 20 per cent below the rate charged under reciprocity agreements on alcohol

coming to the United States from France, Germany, Italy, or Portugal.

Article II of the Cuban treaty is specific and expressly declares that the rates of duty upon certain Cuban commodities shall be 20 per cent of the rates provided by the tariff act of 1897; while Article VIII is, to say the least, exceedingly general in its terms. It is a principle of the law of contracts, equally applicable we think to a treaty, that where two stipulations of a contract or agreement in writing shall conflict, the one which is the more specific shall control. These provisions of Article VIII, not being direct in terms, are not and can not be self-acting. The provisions of Article II are self-acting. Further than this we do not feel called upon to interpret or express any opinion as to the meaning of the language
20 used in Article VIII or the intention of the high contracting parties in adopting it. If we were to hold that it varied the provisions of Article II to the extent of the importers' contention, it would follow as a logical consequence that every tariff concession made by the United States to another country would, *ipso facto*, reduce the rate upon like commodities coming from Cuba. We think the question is parallel with that which has so frequently arisen relative to the favored-nation clause contained in the treaties between the United States and many of the European countries. In discussing the effect of that clause the Supreme Court, in Whitney v. Robertson (124 U. S., 190), said:

It was never designed to prevent special concessions, upon sufficient considerations, touching the importation of specific articles into the country of the other. It would require the clearest language to justify a conclusion that our Government intended to preclude itself from such engagements with other countries, which might in the future be of the highest importance to its interests.

The provisions of Article VIII do not, in our judgment, in any way vary or affect the clear and express stipulations of Article II. These provisions could not act automatically, and, in the absence of legislation giving force and effect to them, the question as to whether or not the products of the soil or industry of Cuba should, under the language of that article, be admitted at a rate preferential in respect to like imports coming from countries with which we have reciprocal agreements reducing the regular rates is a political one of which this Board and the courts have no jurisdiction, and which can be settled only by the high contracting parties through the channels of diplomacy. Nicholas' case, G. A. 5670 (T. D. 25260);
21 Bartam v. Robertson (122 U. S., 116); Whitney v. Robertson (124 U. S., 190).

The protests are overruled.

(Signed) BYRON S. WAITE,
HENDERSON M. SOMERVILLE,
EUGENE G. HAY,
Board of United States General Appraisers.

Endorsed: U. S. Circuit Court—Filed. Feb. 11, 1907—Southern District, New York—John A. Shields, Clerk.

22 At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, Held at the United States Circuit Court Rooms in the Post Office Building in the City of New York, on the 14th Day of November, in the Year of Our Lord One Thousand Nine Hundred and Seven.

Present: The Hon. James L. Martin, Judge.

"A" Suit No. 4812.

ALEXANDER E. FABER and RUDOLPH C. FABER, Doing Business under the Name and Style of G. W. FABER,

vs.

THE UNITED STATES.

The above cause coming on for hearing and determination before this Court on the application of Alexander E. Faber and Rudolph C. Faber doing business under the name and style of G. W. Faber, importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon,

Now after hearing J. Osgood Nichols, Assistant U. S. Attorney on behalf of the Collector for affirmance, and Walter F. Welch, Esq., of counsel for the said importers, for reversal, on motion of Henry L. Stimson, U. S. Attorney

It is ordered, adjudged and decreed that there was no error in said proceedings before said Board of General Appraisers, and that their decisions herein be and the same are hereby in all things affirmed.

JAMES L. MARTIN,
U. S. Judge.

23 (Endorsed:) "A" Suit No. 4812—U. S. Circuit Court, Southern District of New York.—Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, vs. The United States—Judgment of Affirmance.—Henry L. Stimson, U. S. Attorney.—U. S. Circuit Court, Southern District N. Y., Filed Nov. 14, 1907, John A. Shields, Clerk.

24 United States Circuit Court for the Southern District of New York.

"A" Suit No. 4812.

ALEXANDER E. FABER and RUDOLPH C. FABER, Doing Business under the Name and Style of G. W. FABER, Appellants,
against
THE UNITED STATES OF AMERICA, Appellee.

Petition for Allowance of Appeal.

The above-named importers-appellants, by their attorneys, hereby apply for an allowance of an appeal to the United States Supreme Court from the decision and the judgment of the United States Circuit Court, for the Southern District of New York, duly entered herein and filed in the office of the Clerk of the above-named Court on the 14th day of November, in the year of our Lord, 1907, for the reasons specified in the Assignments of Error, which are filed herewith, and pray that a transcript of the record, proceedings and papers upon which said decision and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated the 9th day of November, 1908.

HATCH & CLUTE.
Attorneys for Importers-Appellants.

The foregoing application is granted and the appeal is allowed.

Dated the 9th day of November, 1908.

E. H. LACOMBE,
United States Circuit Judge.

25 (Endorsed:) United States Circuit Court, Southern District of New York.—Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, Appellants, against The United States of America, Appellee.—("A" Suit No. 4812)—Petition for allowance of appeal.—Hatch & Clute, Att'ys for Importers, 100 Broadway, N. Y. City.—A copy of the within paper has been this day received at this office. Nov. 12, 1908. Henry L. Stimson, U. S. Attorney.—U. S. Circuit Court, Southern District N. Y., Filed Nov. 12, 1908, John A. Shields, Clerk.

26 United States Circuit Court, Southern District of New York.

ALEXANDER E. FABER and RUDOLPH C. FABER, Doing Business under the Name and Style of G. W. FABER, Appellants,
against
THE UNITED STATES OF AMERICA, Appellee.

Assignments of Error.

Now come the above-named appellants, by their attorneys Hatch & Clute, and file the following Assignments of Error, which are intended to be urged, and upon which they will rely on their appeal herein to the Supreme Court of the United States from the judgment and decree of the above-named Court, duly entered herein, and filed in the office of the Clerk of said Court on the 14th day of November, 1907.

I. The Circuit Court of the United States, for the Southern District of New York, erred in sustaining the decision of the Board of United States General Appraisers herein, which sustained the action of the Collector, and in not reversing the same, and sustaining the protest of the importer.

II. The said Court, in affirming said Board, erred in holding that Article VIII of the present Commercial Convention with Cuba conflicts with Article II of said Convention; and that no effect can be given to the former.

III. The said Court erred in sustaining said Board and in not holding that there is no conflict between said Articles and in not holding that said Article VIII is a further term of the contract providing in part that the preference granted to Cuba by said
27 Article II shall be preserved in the event that the United States shall choose to grant to any other country more favorable rates of duty than those provided in said Tariff Act of July 24, 1897.

IV. The said Court, in affirming said Board, erred in holding that said Article II is self-executing, and that said Article VIII is not self-executing.

V. The said Court erred in sustaining said Board and in not holding that the said Convention was executed by the Congress of the United States of America.

VI. The said Court erred in sustaining said Board and in not holding that said Article VIII was executed by said Congress.

VII. The said Court erred in sustaining said Board and in not holding that the enactment of said Article VIII in express terms by said Congress created a rule of law over which the judicial department of said United States has jurisdiction, and in not holding that the Courts of said United States and that the said Board should enforce the same.

VIII. The said Court in affirming said Board erred in holding that the Philippine Archipelago does not fall within the intent and meaning of the terms "other countries" as used in said Article VIII, in contradistinction to the terms "foreign country" as used in said Article VIII.

IX. The said Court erred in sustaining said Board and in not holding that the exception provided for in said Article VIII, namely, that sugar from the Republic of Cuba should not be admitted at a reduction of duty greater than twenty per centum of the rates provided in the Tariff Act of July 24, 1897, presupposed and
28 contemplated that all other articles might enjoy a greater reduction in order to preserve the preference granted to Cuban products by said Convention.

X. The said Court erred in sustaining said Board and in not holding that the whole scope and meaning of said convention was to grant mutual and exclusive preferential tariff benefits to the high contracting parties.

XI. The said Court, in affirming said Board, erred in holding that the assessment of $1.80 per proof gallon on the alcohol, covered by the protest of the importers, from Cuba was valid, and not in violation of said Commercial Convention, although the said United States admits alcohol from France, Germany, Italy, Portugal and Spain at the rate of $1.75 per proof gallon.

XII. The said Court, in affirming said Board, erred in holding that the granting of a preferential rate to alcohol from said countries of France, Germany, Italy, Portugal and Spain over alcohol from Cuba is not in violation of the preference granted to Cuba over all other countries under the terms of said Convention.

XIII. The said Court erred in sustaining said Board and in not holding that the alcohol covered by the said protest is entitled to a twenty per centum preferential rate of duty over alcohol imported from France, Germany, Italy, Portugal and Spain into the United States.

XIV. The said Court erred in sustaining said Board and in not holding that the cigars covered by said protest are entitled to the twenty per centum preferential rate over cigars imported from the Philippine Archipelago into the United States.

29 XV. The said Court, in affirming said Board, erred in holding that the question presented by the said protest is parallel with that which has arisen under the so-called Favored Nation Clause in treaties as construed by the United States of America.

XVI. The said Court, in affirming said Board, erred in holding that the benefit granted to Cuba under said Convention, for a good and sufficient consideration moving from Cuba to the United States of America, could be taken away by the said United States by special agreements or otherwise, permitting like goods from other countries to be imported at lower rates of duty than goods from Cuba paid, or that the high contracting parties intended the same, or that the Congress of the United States of America in enacting said Article VIII intended the same.

Dated New York, November 9th, 1908.

ALEXANDER E. FABER AND
RUDOLPH C. FABER,
By HATCH & CLUTE,
Attorneys for Appellants,
No. 100 Broadway, Borough of Manhattan,
New York City, New York.

(Endorsed:) United States Circuit Court, Southern District of New York.—Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, Appellants, against The United States of America, Appellee. ("A" Suit No. 4812)—Assignments of error.—Hatch & Clute, Att'ys for Importers, 100 Broadway, N. Y. City.—U. S. Circuit Court, Southern District N. Y., Filed Nov. 9, 1908, John A. Shields, Clerk.

30 Know all men by these presents, That I, Frederic W. Acton, residing at No. 121 St. Nicholas Avenue, in the City of New York, am held and firmly bound unto the United States of America, in the sum of Fifty Dollars ($50.) to be paid to the United States of America, for the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated the 6th day of November, in the year of our Lord, Nineteen hundred and eight.

Whereas, Alexander E. Faber and Rudolph C. Faber have applied to the Circuit Court of the United States for the Southern District of New York, for the allowance of an appeal to the Supreme Court of the United States, from a judgment of said Circuit Court, duly entered and filed in the office of the Clerk of said Court on the 14th day of November, 1907, in the case of Alexander E. Faber and another, petitioners, against The United States, Suit Number 4812.

Now, therefore, the condition of this obligation is such that if the said Alexander E. Faber and Rudolph C. Faber shall prosecute said proceedings with effect, and pay all damages and costs which shall be awarded against them therein, if they fail to make said proceeding good, then this obligation to be void, otherwise the same shall be and remain in full force and effect.

F. W. ACTON. [SEAL.]

Sealed and delivered and taken and acknowledged this 6th day of November, 1908.

[SEAL.] CHARLES T. FISH,
Notary Public, New York County.

31 UNITED STATES OF AMERICA,
Southern District of New York,
County of New York, ss:

Frederic W. Acton, being duly sworn, says, that he resides in the Southern District of New York, in the City of New York, and that he is worth the sum of One hundred dollars ($100.) over and above all his just debts and liabilities.

F. W. ACTON.

Sworn to before me, this 6th day of November, 1908.

[SEAL.] CHAS. T. FISH,
Notary Public, New York County.

Approved:
E. HENRY LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Circuit Court, Southern District of New York.—Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, Appellants, against The United States of America, Appellee. ("A" Suit No. 4812)—Bond.—Hatch & Clute Att'ys for Importers, 100 Broadway, N. Y. City.—U. S. Circuit Court, Southern District N. Y., Filed Nov. 9, 1908, John A. Shields, Clerk.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to appear before the Supreme Court of the United States at the City of Washington on the 7th day of December next, pursuant to an appeal duly allowed by the United States Circuit Court for the Southern District of New York, filed in the Clerk's Office of said Court on the 9th day of November, 1908, wherein Alexander E. Faber and another are appellants and you are appellee, to show cause, if any there be, why the decree rendered against said appellants in said appeal mentioned, should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named this 9th day of November, in the year of our Lord, One Thousand Nine hundred and Eight.

E. HENRY LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York.

33 [Endorsed:] United States Supreme Court. Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, Appellants, against The United States of America, Appellee. ("A" Suit No. 4812.) (Original.) Citation. E. & ac. 2846. Hatch & Clute, Att'ys for Importers, 100 Broadway, N. Y. City. A copy of the within paper has been this day received at this office. Nov. 12, 1908. Henry L. Stimson, U. S. Attorney. U. S. Circuit Court, Southern District, N. Y. Filed Nov. 12, 1908. John A. Shields, Clerk.

34 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from one to thirty-three inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, Appellants, against The United States of America, Appellees. ("A" Suit No. 4812) as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this ninth day of January, in the year of our Lord One Thousand Nine Hundred and nine, and of the Independence of the said United States the One Hundred and Thirty-third.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. Alexander E. Faber &c., vs. United States. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 21,478. S. New York C. C. U. S. Term No. 134. Alexander E. Faber and Rudolph C. Faber, doing business under the name and style of G. W. Faber, appellants, vs. The United States. Filed January 15th, 1909. File No. 21,478.

SUPREME COURT OF THE UNITED STATES

ALEXANDER E. FABER and RUDOLPH C. FABER, doing business under the name and style of G. W. FABER,
Appellants,

against

THE UNITED STATES,
Appellee.

October Term, 1904.
No. 134.

BRIEF FOR APPELLANTS.

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APPEAL PRINTING COMPANY, NEW YORK.

Supreme Court of the United States.

ALEXANDER E. FABER and RUDOLPH C. FABER, doing business under the name and style of G. W. FABER,
Appellants,

against

THE UNITED STATES.
Appellee.

October Term, 1910.

No. 134.

BRIEF FOR APPELLANTS.

I.

Statement of the Case.

This case comes here direct on appeal from the Circuit Court of the United States, for the Southern District of New York as it involves the construction of a Treaty of the United States.

The case originated in a protest, filed by the appellants with the Collector of Customs at the Port of New York, against the assessment of duties on certain alcohol and cigars from Cuba.

The protest was duly forwarded to the Board of United States General Appraisers which rendered its decision against the importer.

Thereupon an appeal was taken to the United States Circuit Court. That Court affirmed the Board without opinion, and the present appeal is from that judgment.

With respect to the alcohol imported, the Collector computed the duty thereon at $2.25 per proof gallon, the rate applicable under the Tariff Act of July 24, 1897, and deducted twenty per centum as provided for in T. D. 23836, making the duty levied and collected $1.80 per proof gallon.

Under the provisions of Section 3 of the Tariff Act of July 24, 1897, alcohol from France, Germany, Italy and Portugal was being admitted at $1.75 per proof gallon, which was five cents per proof gallon less than the duty collected on the Cuban alcohol.

The importers claim in their protest that the assessment of a higher rate of duty by the Collector on Cuban alcohol than was paid upon like merchandise imported from France, Germany, Italy and Portugal was a direct violation by the Collector of the provisions of Article VIII of the Cuban Treaty, and the Act of Congress enacting it. 33 U. S. Stat., Part 2, p. 2136.

Article VIII of the Treaty reads as follows:

> "*The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries*, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries. Provided, That while this convention is in force, no sugar imported from the Republic of Cuba, and being

> the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897."

The Act of Congress enacting it reads as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the Articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said Convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which are now imported into the United States free of duty, shall continue to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as pro-

vided by the tariff Act of the United States, approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said Convention preferential in respect to all like imports from other countries; PROVIDED, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff Act of the United States, approved Juy twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the Tariff Act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: AND PROVIDED FURTHER, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an Act of Congress, originating in said House."

With respect to the cigars, the Collector likewise assessed them with duty at the rates applicable under the Tariff Act of July 24, 1897, less twenty per centum, notwithstanding he was admitting cigars from the Philippines at the same time at a reduction of 25% from the rates provided in the Tariff Act of 1897, and that accordingly the cigars from the Philippines had a five per cent. preference over those from Cuba.

The importers claim that this also is a violation by the Collector of the Treaty, and the Act of Congress giving it effect.

The importers accordingly maintain on this appeal that the Collector, as an executive officer, is bound by the Treaty, which is the Supreme Law of the land, and by the Act of Congress enacting the same, and giving it effect, and that the Collector was bound in his assessment of duties to give a preference to the goods in question imported from Cuba, granted them by the Treaty, and by the Act of Congress, and that it was wrongful for him, instead of giving them a preference, to assess them at a higher rate of duty than "like imports from other countries" paid. That the computation of duty at a preferential rate on Cuban importations under the Treaty and the Act is purely ministerial, simple to follow, and involves only a mathematical calculation, and that it was as easy for the Collector to observe the Treaty and the Act of Congress in computing the duty as it was to compute the duty in the way he did.

II.

Specifications of the Errors Relied Upon.

The Circuit Court, in affirming the Board without opinion, adopted the Board's decision holding that Article VIII of the Treaty with Cuba conflicts with Article II thereof, and that no effect can therefore be given to the former. The importers on the other hand allege that there is no conflict between these articles, but that Article VIII is a further term of the Treaty, providing in part that the preference granted to Cuba by Article II shall be preserved in the event that the United States shall

choose to grant to any other country more favorable rates of duty than those provided in the Tariff Act of July 24, 1897.

The Board moreover held that Article VIII of the Treaty is not self-executing, but the importers maintain that the Board erred in so holding, for the reason that if it were true that Article VIII is not self-executing still the Congress of the United States executed the Article by enacting it as a law in express terms.

The Board also held that inasmuch as Article VIII was not self-executing, that it created no rule of law over which the judicial department of the United States has jurisdiction, but the importers maintain that Congress, having enacted by Statute, the terms of Article VIII, it thereupon became a law of the United States, which the Courts are bound to take cognizance of and enforce, so long as it stands on the Statute books.

The Board likewise held that the Philippines do not fall within the intent and meaning of the terms "other countries" as used in said Article VIII, in contradistinction to the terms "foreign countries," used in the same Article but that they are equivalent expressions, in spite of the care evident in the Article to discriminate by the use of those dissimilar expressions.

The importers maintain as a principle of international law and uniform international practice in the construction of commercial conventions and trade treaties that Colonies or Dependencies which are under the dominion of a sovereign contracting party to a trade treaty or commercial convention have always been regarded as countries other than the sovereign contracting country when they have been outside the customs union of the sovereign

contracting party, and that the United States has itself in practice many times adopted that principle, and that accordingly the Philippines, being outside the customs union of the United States, were within the contemplation of the language "other countries" in a commercial convention having to do with tariff rates.

The importers further maintain that the Circuit Court erred in sustaining the Board, in not holding that the exception provided for in Article VIII, namely, that sugar from the Republic of Cuba should not be admitted at a reduction of duty greater than twenty per centum of the rates provided in the Tariff Act of July 24, 1897, proved by the exception that the parties meant as a general rule that all other articles should enjoy a greater reduction, in order to preserve the preference granted to Cuban products by the Convention.

Lastly, the importers maintain that the promises of the United States to Cuba were for a good and sufficient consideration moving from Cuba to the United States, and that the United States could not therefore, by special agreements, or otherwise, permitting like goods from other countries to be imported at lower rates of duty than goods from Cuba paid, emasculate or deprive Cuba of the preferences promised in the Treaty, and instead of giving Cuba preference in the language of the Treaty over like imports from "other countries" in fact make Cuban products, as in the present case, pay a higher rate of duty than like imports from other countries. And that the peculiar construction which the United States has chosen in the past to put upon favored nation clauses and treaties has no application to the present case, and does not permit the United States to break its promises to

Cuba at will, or deprive Cuba of all the benefits it got in return for valuable considerations extended to the United States.

POINT I.

A treaty is governed by the same rules of law as other contracts.

A treaty is in its essence a contract differing only from ordinary contracts in that it is an agreement between independent States instead of private parties, and as such it is as obligatory upon the contracting States as private contracts are upon individuals.

> *Foster* v. *Neilson*, 2 Peters., 253, at 314.
> *14 Diamond Rings* v. *U. S.*, 183 U. S., 176, at 182.
> *Head Money Cases*, 112 U. S., 580.

In construing the language of treaties the Courts will adopt the same general rules which are applicable in the construction of statutes, contracts and written instruments generally, in order to carry out the purpose and intention of the makers.

> *Tucker* v. *Alexandroff*, 183 U. S., 424.
> *The Amiable Isabella*, 6 Wheat., 1 (U. S.), at 71.
> *U. S.* v. *Percheman*, 7 Peters, 51.

The Court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. It cannot dispense with any of the conditions or requirements of the treaty, or take away any qualification or integral part upon any notion

of equity or general convenience, or substantial justice, or political expediency.

> *The Amiable Isabella*, 6 Wheat. (U. S.), 1, at page 71.

It is settled that where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and one liberal, the latter construction is to be preferred and the interpretation which is favorable to the inferior party should be adopted.

> *Worcester* v. *Georgia*, 6 Peters, 582.
> *Tucker* v. *Alexandroff*, 183 U. S., 424.
> *Shanks* v. *Dupont*, 3 Peters (U. S.), 242.
> *Haucnstein* v. *Lynham*, 100 U. S., 483.
> *Geofroy* v. *Riggs*, 133 U. S., 258, at page 272.

Vattel states, as general maxims to be observed in the interpretation of treaties, the following:

> "It is not allowable to interpret what has no need of interpretation; if he who could and ought to have explained himself clearly and fully has not done it, it is the worse for him; he cannot be allowed to introduce subsequent restrictions which he has not expressed; neither the one nor the other of the parties interested in the contract has a right to interpret the deed or treaty according to his own fancy; on every occasion when a person could and ought to have made known his intention, we assume for true against him what he has sufficiently declared; every deed, and every treaty, must be interpreted by certain fixed rules calculated to determine its meaning, as naturally understood by the parties concerned at the time when the deed was drawn up and accepted. Vattel Law of Nations, bk. 2, c. 17."

We therefore respectfully submit that in approaching the questions involved in the present appeal no argument should be considered persuasive which deals with what may be convenient or expedient with reference to the United States or with what the United States may be supposed to have intended that is at variance with the intention of the contracting parties as expressed in the instrument.

POINT II.

The American favored nation doctrine is not applicable to this case.

The Board of United States General Appraisers in its opinion in the present case (Record, p. 11), stated that it thought the question raised by the present case is parallel with that which has so frequently arisen relative to the Favored Nation Clauses contained in the Treaties between the United States and many of the European countries. Citing

Bartram v. *Robertson*, 122 U. S., 116.
Whitney v. *Robertson*, 124 U. S., 190.

We respectfully submit, however, that an examination of those cases will disclose that they have no aplication to the present case.

In the case of Bartram *v.* Robertson, the goods involved were sugars and molasses from the Island of St. Croix, a part of the Dominions of the King of Denmark. It was claimed that by virtue of the Treaty with Denmark then in force such goods should be admitted free of duty, for the reason that the United States had made a Treaty with the King of the Hawaiian Islands admitting sim-

ilar goods from the latter Islands free of duty. The provisions of the Danish Treaty relied upon were to the effect that neither nation should grant any particular favor to other nations in respect of commerce and navigation which should not immediately become common to the other party, who should enjoy the same freely, if the concessions were freely made, or upon allowing the same compensation, if the concessions were conditional. This Court said in that case:

> "We are thus called upon to give an interpretation to the clause in the treaty with Denmark which bears upon the subject of duties on the importation of articles produced or manufactured in its dominions, and the effect upon it of the treaty with the Hawaiian Islands for the admission without duty of similar articles, the produce and manufacture of that Kingdom."

We respectfully submit that this Court decided in that case that the language of the Treaty with Denmark as interpreted by this Court did not grant to Danish goods the favor claimed, and that the ground of this Court's decision was that since the favors granted to the Hawaiian Islands were for valuable considerations granted in turn by the Hawaiian Islands to the United States, that inasmuch as Denmark had made no like compensation, under the language of the Danish Treaty Denmark was not entitled to like favors. This Court said:

> "Our conclusion is, that the treaty with Denmark does not bind the United States to extend to that country, without compensation, privileges which they have conceded to the Hawaiian Islands in exchange for valuable concessions. On the contrary, the treaty provides that like compensation shall be given for

> such special favors. When such compensation is made it will be time to consider whether sugar from her dominions shall be admitted free from duty."

This Court in that case was simply interpreting the language of a contract between the United States and Denmark, and unless we find the language in the present contract between Cuba and the United States to be the same, we respectfully submit that the Bartram case has no appplication any more than the decision of a Court as to the meaning of a contract between two private citizens would have any bearing upon a subsequent contract brought before that Court for interpretation and enforcement, unless the language were the same.

In the present case the promises made to Cuba by the United States were in consideration of valuable concessions made by Cuba to the United States, and therefore the importers in the present case are not asking that the promises of the United States be fulfilled without any consideration moving from the nation from whence the goods are imported. On the contrary, they are asking that the promises be fulfilled in return for ample and valuable considerations.

In the case of the treaty with Switzerland, it was admitted by the United States that distilled spirits from that country were entitled to the most favored treatment accorded under Section 3 of the Tariff Act of July 24, 1897. (T. D. 20386.) If the Swiss treaty bound the United States to give most favored treatment to that country, then the inquiry is open whether the treaty with Cuba does not also entitle Cuba to treatment according to the express stipulations of the treaty without regard to what

may have been decided in another case under different language were the rights of another country.

In Whitney *v.* Robertson, *supra*, it was pointed out that the treaty with San Domingo had no provision therein as to free concessions or to concessions upon compensation, and this Court, after adverting briefly thereto at page 193, went on to say that there was another and complete answer to the plaintiffs, namely, that the act of Congress under which the duties were collected authorized their exaction and made no exception in favor of goods of any country, hence there was a conflict between the stipulations of the treaty and the later Act of Congress, and that the latter must control, although it broke the treaty, in which event the Court could afford no redress.

We understand the reason for the Court's decision to be that Treaties and Acts of Congress are equally the supreme law of the land, and that if a later Act of Congress conflicts with a treaty already in existence that then the Act of Congress must prevail, and the courts can afford no redress for the breach. In the present case, however, the treaty in question was subsequent to the Act of Congress, and moreover there is no conflict between the Treaty and the Act, hence none of the reasons which gave rise to this Court's decision in Whitney *v.* Robertson arises in the present case, and therefore it is not controlling.

We respectfully submit that the favored nation clause usually found in treaties of the character passed upon in Bartram *vs.* Robertson and Whitney *vs.* Robertson, have nothing in common with the language of the present treaty now under consideration.

POINT III.

The promise of the United States for a good and valuable consideration, enacted by the Congress, becomes a rule of law enforceable by the Courts.

Article VI, Paragraph Second, of the Constitution, reads as follows:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Article III, Section 2, reads in part as follows:

> "The judicial Power shall extend to all cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."

The general rule is that the courts are bound to give effect to treaties in precisely the same manner that they do to the provisions of the Constitution or the laws of Congress. There is no distinction. They are equally the supreme law of the land.

> *U. S.* v. *The Peggy*, 1 Cranch., 103;
> *Strother* v. *Lucas*, 12 Pet., 410, at page 439;
> *Foster* v. *Neilson*, 2 Pet., 253, at page 314.

In Nicholas *v.* United States, 122 Fed., 892, the Court construed and enforced the provisions of the reciprocity treaty with France.

There are two exceptions, however, to the general rule that the courts have power to enforce treaty stipulations as the supreme law of the land:

First. Where the stipulation of the treaty is in the form of an executory promise. For example, that the United States will appropriate money to pay a claimant. If Congress thereafter refuses or omits to pass a law executing the promise and appropriating the money, the claimant cannot come into court and ask the court to enforce the unexecuted promise.

The withholding of the promise by Congress is purely a political question, and the expediency or morality of it or otherwise has not been delegated to the judiciary to determine.

Second. Where Congress has clearly, expressly and unequivocally enacted a law subsequent to a treaty in direct conflict with the treaty and taking away its benefits or altering the law of the land as expressed therein, then in such case also, as well as in the case of unexecuted promises, the question is a political one and the courts can only pass upon the law of the land as they find it and have nothing to do with the expediency or morality of an Act of Congress abrogating or violating an existing treaty.

Boudinot v. *U. S.*, 11 Wall., 616.
Whitney v. *Robertson*, 124 U. S., 190.
Taylor v. *Morton*, 2 Curtis, 454, 459.

If the foregoing is a correct exposition of the

law on the subject, then the question whether or not this Court has jurisdiction depends on the question of whether or not this case falls within one of the exceptions stated. As to the first exception that can have no application, for the reason that Congress has expressly enacted Article VIII of the Treaty with Cuba, hence the provisions thereof are not only the law of the United States, under the Constitution, by treaty, but by Act of Congress, which Act was obviously passed for the avowed purpose of giving effect to the language of the treaty, and to remove any doubt on that point.

Section 3 of the Tariff Act of August 5, 1909, reads as follows:

> Sec. 3. That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the eleventh day of December, nineteen hundred and two, or the provisions of the Act of Congress heretofore passed *for the execution of the same.*

What does it matter that Article VIII of the treaty is not self executing, as the Board of Appraisers says in its opinion, if Congress has executed it *is haec verba.* It surely becomes a rule of law enforceable by the Courts after such enactment.

With respect to the second exception, no question can arise, for the law which the Board of United States General Appraisers deemed to be in conflict with the Treaty was enacted prior to the Treaty, and not subsequently thereto, and if there be any conflict at all it must be the Treaty and

the Act of Congress enacting the same which governs this Court, and not, as in the cases relied upon by the Board, an Act of Congress in direct conflict with the Treaty enacted subsequently thereto and superseding the same.

POINT IV.

Alcohol from Cuba is entitled to a twenty per centum preference over like merchandise from France, Germany and other foreign countries.

Section 1, Paragraph 289 of the Tariff Act of July 24, 1897, under which the alcohol here in question was imported, reads as follows:

> "289. Brandy and other spirits manufactured or distilled from grain or other materials, and not specially provided for in this Act, two dollars and twenty-five cents per proof gallon."

Section 3 of the same act reads in part as follows:

> Brandies, or other spirits manufactured or distilled from grain or other materials, one dollar and seventy-five cents per proof gallon.

It was under Paragraph 289 that the Collector computed duty on the Cuban alcohol at $2.25 per proof gallon, and then according to his construction of the Cuban Treaty he deducted twenty per cent. therefrom to arrive at the rate at which alcohol from Cuba was entitled to entry under the Treaty, and Act of Congress putting the same in force.

In Section 3 it is provided that for the pur-

pose of equalizing the trade of the United States with foreign countries, and their colonies, producing and exporting to this country brandies or other spirits manufactured or distilled from grain or other materials, that the President may enter into Commercial Agreements under which such merchandise may be entered into this country at $1.75 per proof gallon. In other words, the maximum rate under the Act of 1897 is $2.25 per proof gallon, but under certain conditions, provided for in that act, such merchandise may be imported into this country at a minimum rate of $1.75 per proof gallon, which minimum rate was applied during the time in question to alcohol imported from certain foreign countries.

The Act of Congress enacting the Cuban Treaty, quoted in full under the statement of facts herein, at page 3, reads in part as follows:

> "All other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the Tariff Act of the United States, approved July 24, 1897, or as may be provided by any Tariff Law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said Convention preferential in respect to all like imports from other countries."

It will be observed, as already pointed out, that there are two rates of duty on alcohol provided by the Tariff Act of the United States, approved July 24th, 1897. In Section 1 there is a maximum rate of $2.25 per proof gallon, and in Section 3

upon the happening of a certain condition the rate is reduced to $1.75 per proof gallon. The Cuban Treaty now under consideration, and the Act of Congress putting the same in force, provides that articles from Cuba shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the Tariff Act of the United States, approved July 24, 1897, and that the rates of duty granted by the United States to Cuba are and shall continue preferential in respect to "all like imports from other countries." If then under the Tariff Act of 1897 alcohol from some countries pay $2.25 per proof gallon, and alcohol from other countries pay $1.75 per proof gallon, it would seem apparent that in order to make the rate of duty on alcohol granted by the United States to Cuba "preferential in respect to all like imports from other countries" that the Collector should have figured the preference over the $1.75 rate rather than the $2.25 rate as he did, and the claim of the importer should be sustained in this case, that according to the plain intent of the treaty, as expressed by the language thereof, Cuban alcohol is entitled to a preference over alcohol from any other country.

We respectfully submit that it was never the intent of the parties, as disclosed by the language, that the United States should be at liberty, after making the Treaty with Cuba, to turn about and emasculate the Treaty and take away from Cuba all the benefits she got under it by making special agreements with other countries, letting in their goods at cheaper rates than Cuban goods paid, with the result that instead of giving to Cuban goods the preference expressly stated in the Treaty, Cuban goods would be discriminated against

and be compelled to pay a higher rate. The whole tenor of the Treaty indicates that the greatest care was used between the parties to see to it that the preference granted by the Treaty to each country should be preserved. Cuba could not be supposed to know all the facts and circumstances of our intricate Tariff system or to be put on inquiry as to the rates with respect to different goods from different countries, and when the United States solemnly declared in the Treaty that the rates granted to Cuba were and should continue to be preferential in respect to all like imports from other countries, Cuba was entitled to rely thereon, and the United States ought to carry out that promise in good faith.

At the present time negotiations are under way looking towards a reciprocity treaty with Canada by which numerous articles from that country are to be admitted free of duty into the United States. If this country can make such treaties without regard to the rights of Cuba under the present Treaty there is no reason why similar treaties cannot be made with countries competing directly with Cuba, letting in their goods free, and leaving goods from Cuba to pay the rates in the Tariff Act of 1897, less twenty per cent., with the result that Cuba would be deprived of all the benefits promised by the United States in consideration of the promises made by Cuba as stated in the Treaty. All the terms of the Treaty with Cuba should be given effect, and we respectfuly submit that the stipulation of the Treaty cannot be ignored nor erased therefrom, that Cuba is to have during the term of the Convention a preference in respect to all like imports from other countries.

The Century Dictionary defines "preferential" as follows:

> "Characterized by or having preference; such as to be preferred."

"Prefer" is defined as follows:

> "5. To set before other things in estimation; hold in greater liking or esteem; choose; incline more toward."

We respectfully submit that the assessment of duty at $1.80 per proof gallon on alcohol from Cuba by the Collector in this case, when he was admitting alcohol from France, Germany and other countries at $1.75 per proof gallon, was a plain violation of the language of the Treaty, and the Act of Congress, and that he discriminated against Cuban alcohol rather than gave it a preference over that "from all other countries."

It is to be observed that Article VIII of the Treaty contains an exception to the effect that no sugar imported from Cuba shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the Tariff Act of the United States, approved July 24, 1897. This exception, therefore, proves the rule that with respect to all other articles except sugar it was intended that they should enjoy a greater reduction than twenty per centum of the rates provided in the Act of 1897 in order to preserve the preference given Cuban goods. By Section 2 of the Tariff Act of August 5th, 1909, it is provided that all articles imported from any foreign country into the United States shall pay the rates of duty prescribed in the schedules of that Act, and in addition thereto twenty-five per centum ad va-

lorem, which rate shall constitute the maximum tariff of the United States.

Immediately preceding Section 2 is a paragraph that the provisions of the dutiable list and the free list of that Act shall constitute the minimum tariff of the United States. We respectfully submit that no one would contend that, under the Cuban Treaty, Cuban goods were only entitled to a twenty per centum preference over the maximum rates of the Tariff Act of August 5th, 1909, but it is plain that they are entitled to a twenty per centum reduction over the minimum rates of that Act. In the same way we respectfully submit that it is equally clear that Cuban alcohol was entitled under the Act of 1897 and the Treaty to a twenty per centum preference over the minimum rates therein provided for.

POINT V.

The Philippines are within the phrase 'other countries' as used in Article VIII of the Cuban Treaty.

If it be true, as maintained by the importers herein, that imports from Cuba, by the terms of the Treaty and the Act of Congress executing the same, are entitled to a prefrence of twenty per centum over all like imports from countries which are concededly foreign, then the question arises whether or not imports from Cuba are likewise entitled to a preference over like imports from the Philippines, on the ground that the latter, as well as concededly foreign countries, are within the phrase "other countries" as used in the Treaty and Act of Congress executing the same.

It is to be noted that in the Treaty and the Act of Congress a careful distinction is made between "other countries" and "foreign countries." Thus in Article VIII of the Treaty in the principal clause the preference is given on the one hand by Cuba and on the other hand by the United States over all like imports from "other countries," but in the proviso or exception thereto it is to be noted that with respect to sugar it is provided that "no sugar the product of any other foreign country" shall be admitted at a lower rate of duty than that provided by the Tariff Act of the United States, approved July 24, 1897.

We cannot suppose that this distinction was made without reason. On the other hand, the presumption is that the distinction made was the result of a careful choice of words, and that the contracting parties meant that the phrase "other countries" should mean something different from "any other foreign country."

In support of the proposition that the phrase "other countries," as used in the Treaty includes the Philippines, as well as concededly foreign countries, the importers rely upon numerous instances of International usage. From these it is maintained that the rule is clear that in commercial conventions and treaties of trade and commerce between two nations such nations have always regarded countries over which either of the contracting parties had dominion and sovereignty as being outside of the convention or treaty, and to be treated as other countries when such countries were outside of the Customs union of either of the sovereign contracting parties.

It is true that this Court held, in the case of

Fourteen Diamond Rings v. *U. S.*, 183 U. S., 176, that after the acquisition of the Philippines by the United States, imports from the Philippines were not subject to duty under the Tariff Act of July 24, 1897, which levied duty "upon all articles imported from foreign countries," but it does not follow by any means that because the Philippines are not a foreign country within the meaning of that phrase as used in the Tariff Act of 1897, that they do not fall within the term "other countries," used in the Commercial Convention between the United States and Cuba.

In *Downs* v. *Bidwell*, 182 U. S., 244, at pages 277 and 278, this Court points out that there may be countries subject to the jurisdiction of the United States which are other countries than of the United States.

At the time when the reciprocity treaty with France was concluded, under Section 3 of the Tariff Act of 1897, it was maintained, on the part of France, that Algeria fell within the terms of the Commercial Agreement between France and the United States, but the United States denied this, and maintained that Algeria was an African country different from and other than France, and consequently not entitled to the benefits of the Treaty.

United States vs. *Tartar Chemical Co.*,
127 Fed. Rep., 944.

By the terms of Paragraph 626 of the Tariff Act of July 24, 1897, it is provided that if there be imported into the United States crude petroleum, or the products of crude petroleum, produced in any country which imposes a duty on petroleum, or its products, exported from the United States

there shall in such cases be levied, paid and collected a duty upon said crude petroleum, or its products, so imported, equal to the duty imposed by such country.

Under T. D. 29149 the Treasury Department instructed the Collector of Customs at Philadelphia to levy a countervailing duty on benzine imported from the Dutch East Indies equal to the import duty on benzine brought into the Dutch East Indies, showing that for Tariff purposes the Dutch East Indies were regarded as a country within the language of Paragraph 626.

So also under the same paragraph India was regarded as a country, as distinguished from Great Britain, and paraffine from India was assessed with a countervailing duty equal to the import duty on paraffine imported into India, notwithstanding that England itself imposes no duty on paraffine. T. D. 27507, G. A. 6405.

In other words for tariff purposes the United States regarded Great Britain as one country and India as another, where the latter had its own customs system as distinguished from the sovereign country having dominion over it.

In *Senate Document 185, 60th Congress, First Session*, will be found a Commercial Agreement between Germany and the United States with its annexes, etc. By Article V thereof it is provided as follows:

> "The present agreement shall apply also to countries or territories which are now or may in the future constitute a part of the Customs territory of either contracting parties."

In *T. D. 27840*, are reported extracts from communications exchanged between the Spanish Min-

istry of State and the American Legation at Madrid, explanatory of the meaning of certain portions of a reciprocal commercial agreement between the United States and Spain, published in T. D. 27583, of Setember 1st, 1906, by which it was agreed that the words "United States" wherever used in the said agreement should be deemed to include the territories and possessions of the United States to which the general tariff laws governing imports into the States admitted into the Union are applied. In other words, in a Commercial Agreement between the United States and Spain it was agreed that all territories and possessions falling within the Customs Union of the United States should be embraced within the words "United States," and any territory or possessions not within the Customs Union should be regarded as outside of the words "United States."

In the Treaty of 1854 with Great Britain, regulating Commerce and Navigation between the United States and the British possessions in North America, which will be found in "Treaties and Conventions between the United States and other powers 1776-1887," printed at the Government Printing Office, Washington, 1889, at page 451, it is agreed that certain articles enumerated in the schedule annexed, being the growth and produce of the aforesaid British Colonies or the United States, shall be admitted into each country respectively free of duty. This shows that the contracting parties regarded Canada on the one hand and the United States on the other as countries, independent of and distinguished from the sovereign contracting party, Great Britain, itself.

In the same Volume, at page 1204, in the Commercial Agreement between the United States and

Spain, Cuba, Porto Rico and the Philippines are characterized as countries belonging to the Crown of Spain, and a distinction is made between them as countries belonging to the Crown of Spain and foreign countries.

In *Queen* v. *The Commissioners of Stamps and Taxes*, 18 Law Journal, Queens Bench, 201, Lord DENMAN, C. J., said at page 207:

> "Numerous cases have established the independency of property situate abroad with respect to the revenue laws of this country. The possessions of the East India Company are considered as foreign states. We do not know that any duty is there payable on probate, or that such duty is not payable. The duty may have been heavier at Calcutta, because the property there was subject to no debts. At any rate, we should be doing indirectly what the law has carefully abstained from doing directly, if we made foreign property contribute to the expense of probate here."

In *Campbell* v. *Hall*, 1 Cowper, 204, at page 211, the Court discusses the status of the Island of Jamaica with reference to the laying of customs duties on goods imported from that Island, and says:

> "In the year 1722 the Assembly of Jamaica being refractory it was referred to Sir Philip Yorke and Sir Clement Wearger to know what could be done if the assembly should obstinately continue to withhold all the usual supplies. They reported thus: 'If Jamaica was still to be considered as a conquered island, the King had the right to levy taxes upon the inhabitants; but if it was to be considered in the same light as the other colonies, no tax could be imposed upon the inhabitants

> but by an assembly of the island, or by an act of Parliament.'"

And at page 212:

> "Jamaica from the first settling was an English Colony, who under the authority of the King planted a vacant island, belonging to him in right of his crown, like the cases of the Island of St. Helena and St. John mentioned by Mr. Attorney General."

A case defining the status of Ireland is that of Otway *v.* Ramsay. This was a King's Bench case which arose in the year 1736. Lord HARDWICKE in his opinion, said:

> "Ireland must be considered as a provincial Kingdom, part of the dominion of the Crown of England, but no part of the realm."

Sir H. JENKYNS, in his book entitled "British Rule and Jurisdiction Beyond the Seas," refers to the political status of British India, at page 41, in these words:

> "British India is in no sense a colony, even with the extension commonly given to that word, but is a dependency acquired partly by conquest, partly by cession."

The anomalous situation of the Channel Islands is discussed in Cooley's Blackstone, Vol. 1 (4th Ed.), at pages 106 and 107:

> "And, first, the Isle of Man is a distinct territory from England and is not governed by our laws; neither doth any act of Parliament extend to it unless it be particularly named therein, and then an act of Parliament is binding there.
>
> "The Islands of Jersey, Guernsey, Sark, Alderney and their appendages were parcel

of the Duchy of Normandy, and were united to the Crown of England by the first Princes of the Norman line. They are governed by their own laws * * *. They are not bound by the common acts of our Parliament unless particularly named. All causes are originally determined by their own officers, the bailiffs and jurats of the islands * * *."

In *The United States* v. *The Nancy and the Caroline*, 3 Wash., 281, the case involved the construction of the Non-importation Law of March 2, 1811, prohibiting intercourse with the colonies and dependencies of Great Britain. Certain goods were brought to Philadelphia from the Island of Malta, and this case was an information for breach of the Non-importation Laws. Mr. Justice BUSHROD WASHINGTON delivered the opinion of the Court, and said at pages 289 and 290:

"The Court has not had an opportunity to enter into a minute investigation of the actual or political state of the Island of Malta. But on a general view of the books which detail its history, from the time it was invaded by the French, until the period when this shipment was made, it does not seem to have been at any time permanently or rightfully incorporated with the domain of Great Britain. It continues a possession gained by conquest from France, and not from the people or ancient government of the island, and consequently the law of nations imposed an obligation upon the conqueror to restore the island to the people, and not to bring it under subjection to a new master. The Island appears to be under a military government, notwithstanding the commander is styled civil governor or commissioner * * *. But the natives have never ceased to claim an independent right to the Government and soil; although from a detestation of their former op-

pressors and perfidious betrayers, the Knights of St. John, they have frequently requested, and have as often been denied, the privileges and laws enjoyed by British subjects. Nothing shows more strongly that they are not considered by Great Britain herself as part of her subjects, or the Island as part of her territories * * *. It is only a foreign possession, without certain permanence or settled right."

In the Daily Consular and Trade Reports, published at Washington, D. C., Tuesday, November 27, 1906, No. 2729, at page 1 thereof, is a report from the Special Agent of the United States at Melbourne to the effect that Australia has in contemplation an Act granting to Great Britain preferential Tariff treatment over all other manufacturing countries exporting goods to Australia. On page 5 of the same document is a report by Consul General Bray of a proposed preferential Trade Agreement between Australia and New Zealand.

In the Daily Consular Reports of December 28, 1907, at page 4 thereof, under the title Tariff Notes is an account of the French-Canadian Commercial Treaty between France and Canada, commenting upon the fact that it is significant of the development of the Dominion as a nation that this Convention was practically the result of negotiations conducted by Canadian Ministers. Under that Commercial Treaty it is reported that Canadian products shall enjoy the benefit of the French minimum tariff when imported into France, Algeria, the French Colonies and Possessions, and the territories of the Protectorate of Indo-China.

Just here it is worthy of note that in the prior

discussion in this brief of the Commercial Treaty of Reciprocity between the United States and France, the United States maintained that the favors granted were limited to France itself as a well-known and well-defined European country, and did not include Algeria. Afterwards the agreement was amended to include Algeria, which makes it plain that with respect to the other French Colonies and Possessions and the territories of the Protectorate of Indo-China both France and the United States regard those as "other countries," and not within the terms of the Franco-American Reciprocity Treaty.

From all these examples we submit it is quite apparent that by international usage, which must govern in the construction of a Treaty between two nations, the Philippines must be regarded as falling within the phrase "other countries" in a Commercial Convention having to do with Tariff rates between Cuba and the United States. This is necessarily true if the Philippines have their own customs laws, which are quite different from those of the United States, and if the Philippines therefore are without the customs union of the United States.

In *T. D. 24051*, it is pointed out that the Customs Administrative Act of June 10, 1890, shall apply to all articles coming into the United States from the Philippine Archipelago, and accordingly an entry of the merchandise must be made at the Custom House in the United States, the goods must be classified under the Tariff Act of 1897, and all the incidents flowing therefrom are the same as in the case of any other goods imported from any country.

In *T. D. 28401* the Treasury Department in ac-

cordance with the opinion of the Attorney General ruled that merchandise imported from the Philippines on which duty was paid, and which was then manufactured into articles and exported from the United States, was entitled to the benefit of drawback, and was to be regarded as imported merchandise within the meaning of Section 30 of the Tariff Act of 1897, although not brought in from a foreign country.

In *Internal Revenue Circular No. 581*, it is pointed out that by the First Section of the Philippines Act of July 1st, 1902, it provides in effect that the laws of the United States shall not apply to the Philippine Islands, and that accordingly the Internal Revenue Law of the United States has no application to cigars manufactured in the Philippines. It is equally the case that the general Tariff Acts of the United States have no application to the Philippines, and they are consequently wholly without the Customs Union of the United States.

In *Rassmussen* vs. *U. S.*, 197 U. S., 516, it was held that one accused of a misdemeanor in Alaska could not be deprived of a trial by a common law jury, for the reason that Alaska had been incorporated as a territory of the United States, and that the Constitution of the United States was dominant there.

In *Dorr* v. *U. S.*, 195 U. S., 138, it was held on the other hand that the Sixth Amendment to the Constitution was not controlling upon Congress in legislating for the Philippine Islands, for the reason that the Philippines had not been incorporated into the United States as a part thereof.

From all these examples and illustrations, therefore, we respectfully submit that the Philippines

fall within the phrase "other countries," as used in the Cuban Treaty, and that, therefore, the preference which was granted to Cuban products by the United States over all like imports from "other countries" should be held to include a preference over imports from the Philippines.

From the standpoint of reason, as well as from the examples of international usage cited in the construction of commercial conventions, we respectfully submit that when two sovereign nations contract with respect to the duties on imports from one country into the other that they must necessarily have reference to the territory within the customs union of the sovereign contracting parties, and that as distinguished from the two sovereign contracting parties, territories and possessions of either which are outside of the customs union are to be regarded as "other countries." Thus in the example, cited Ireland and the Channel Islands, which are within the customs union of Great Britain, would necessarily be regarded in a treaty with Great Britain, having to do with customs rates, as falling within the words "Great Britain," but Canada, India, Australia, or New Zealand, each having its own customs and revenue system, would be regarded for the purposes of a commercial convention as "other countries," although they were possessions, dependencies or territories of Great Britain.

In the Cuban treaty, therefore, we submit that all the territory of Cuba within the customs union of that country is to be regarded as the party on the one hand and the United States and all its territories and possessions within the customs union of the United States is to be regarded as the party on the other hand, and that the phrase

"other countries" as used in the Treaty must be construed to be inclusive of all other countries outside of those within the customs union of Cuba and of the United States respectively, and that accordingly the Philippines fall within the words "other countries" as used in this commercial convention.

As has been submitted in the First Point herein no arguments of convenience or political expediency should interfere with the true construction of this treaty as between two nations according to international usage. Many arguments of convenience and political expediency were advanced in the Insular cases, all of which were rejected by this Court without regard to the result that might flow from the decision of the Court in obedience to correct principles.

If the present movement for the consummation of a reciprocity treaty with Canada succeeds we submit it ought to be made known by this Court whether Cuba can be discriminated against and deprived of the benefit of her agreement with the United States, and whether numerous articles can be admitted free of duty from Canada by agreement without according to Cuba the same rights under the treaty now in existence. If Cuba can be discriminated against in any of these ways we fail to see how the promise of the United States in the Cuban treaty can mean anything to the effect that Cuban products shall have a preference over all like imports from other countries. If the United States for any reason is not willing to carry out its agreement with Cuba then there is ample provision therein for denouncing the same, and until that time we respectfully submit it should be carried out according to its terms.

POINT VI.

The protest of the importers should be sustained and the judgment of the Circuit Court reversed.

Respectfully submitted,

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EDWARD S. HATCH,
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Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

ALEXANDER E. FABER AND RUDOLPH C. Faber, doing business under the name and style of G. W. Faber, appellants,

v.

THE UNITED STATES.

No. 134.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a direct appeal from the judgment of the Circuit Court of the United States for the Southern District of New York, affirming a decision of the Board of General Appraisers, construing Articles II and VIII of the Commercial Convention between the United States and Cuba, approved December 17, 1903 (33 Stat., 2136, 2137, 2140, 2141).

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The merchandise is cigars and alcohol imported from Cuba in 1906 at the port of New York. Duties were assessed as follows:

On the cigars: Four dollars and fifty cents per pound and 25 per cent ad valorem, the rates imposed in paragraph 217 of the tariff act of July 24, 1897, *infra*, less 20 per cent, the reduction specified in Article II of said convention, which made the net rates $3.60 per pound and 20 per cent ad valorem.

On the alcohol: Two dollars and twenty-five cents per proof gallon, the rate imposed in paragraph 289 of said act, *infra*, less 20 per cent, making the net rate $1.80 per proof gallon. (R., 6.)

The importers filed a protest in accordance with section 14 of the act of June 10, 1890 (26 Stat., 131, 137, ch. 407), claiming that the reduction of 20 per cent should have been based and calculated upon the rates charged upon cigars coming from the Philippine Islands and upon alcohol imported from France, Germany, Italy, and Portugal.

The rate levied at that time, to wit, in 1906, on cigars coming from the Philippine Islands, was 75 per cent of the rates imposed in said paragraph 217 of the tariff act of 1897. This reduction was authorized and directed by section 2 of the act of March 8, 1902 (32 Stat., 54, ch. 140). Under this act cigars coming from the Philippine Islands were subject to a duty of $3.37 per pound and 18¾ per cent ad valorem. The further reduction of 20 per cent claimed by appellants would make the net rates $2.70 per pound and

15 per cent ad valorem, or 40 per cent less than the regular tariff rates.

The rate levied at that time, to wit, in 1906, on alcohol (distilled spirits) imported from France and other countries under reciprocal commercial agreements negotiated in accordance with section 3 of the tariff act of 1897, *infra*, was $1.75 per proof gallon. A further reduction of 20 per cent would make the net rate $1.40 per proof gallon, or 37.8 per cent less than the general tariff rate.

The Board of General Appraisers overruled the protest and sustained the assessment of duties made by the collector of customs. (R., 8–11.) The board decided the several points involved in the case as follows:

1. PREFERENTIAL TARIFF—PHILIPPINE ARCHIPELAGO—OTHER COUNTRIES.

The Philippine Archipelago is not an "other country" within the meaning of that phrase as used in Article VIII of the Cuban treaty of December 27, 1903, and commodities coming from Cuba are dutiable at 20 per cent less than the rates provided in the tariff act of 1897, and not at 20 per cent less than rates provided for like commodities from the Philippines.

2. SAME—ARTICLES II AND VIII, CUBAN TREATY.

Article II of the Cuban treaty of December 27, 1903, being more specific in its terms, is not modified or controlled by the general provisions of Article VIII of said treaty.

3. SAME—RECIPROCITY AGREEMENT WITH FRANCE AND OTHER COUNTRIES.

> Alcohol coming from Cuba is dutiable under the provisions of Article II of the Cuban treaty at 20 per cent less than the rate provided for alcohol by the act of 1897, and not 20 per cent less than the rate provided therefor by the reciprocity agreements with France, Germany, Italy, and Portugal.

The Circuit Court affirmed the decision of the Board of General Appraisers without writing an opinion. (R., 12.)

Pertinent provisions of the convention with Cuba and of acts of Congress are as follows:

CUBAN CONVENTION (33 Stat., 2136–2142).

ARTICLE I.

> During the term of this convention all articles of merchandise being the product of the soil or industry of the United States which are now imported into the Republic of Cuba free of duty and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty shall continue to be so admitted by the respective countries free of duty.

ARTICLE II.

> During the term of this convention all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba imported

into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

ARTICLE III.

During the term of this convention all articles of merchandise not included in the foregoing Article I and not hereinafter enumerated being the product of the soil or industry of the United States imported into the Republic of Cuba shall be admitted at a reduction of twenty per centum of the rates of duty thereon as now provided or as may hereafter be provided in the customs tariff of said Republic of Cuba.

ARTICLE IV.

During the term of this convention the following articles of merchandise as enumerated and described in the existing customs tariff of the Republic of Cuba, being the product of the soil or industry of the United States imported into Cuba, shall be admitted at the following respective reductions of the rates of duty thereon as now provided or as may hereafter be provided in the customs tariff of the Republic of Cuba.

Schedule A.

To be admitted at a reduction of twenty-five (25) per centum.

* * * * *

Schedule B.

To be admitted at a reduction of thirty (30) per centum.

* * * * *

Schedule C.

To be admitted at a reduction of forty (40) per centum.

* * * * *

ARTICLE VI.

It is agreed that the tobacco, in any form, of the United States or of any of its insular possessions, shall not enjoy the benefit of any concession or rebate of duty when imported into the Republic of Cuba.

* * * * *

ARTICLE VIII.

The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries: *Provided*, That while this convention is in force, no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the

United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897.

* * * * *

ACT OF DECEMBER 17, 1903 (33 Stat. 3, c. 1).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, and thereupon on the tenth day after the exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which are now imported into the United States free of duty, shall continue to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry

of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said convention preferential in respect to all like imports from other countries: *Provided*, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: *And provided further*, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an act of Congress, originating in said House.

* * * * *

ACT OF JULY 24, 1897 (30 Stat., 151, 169, 173, 203, c. 11).

PAR. 217. Cigars, cigarettes, cheroots of all kinds, four dollars and fifty cents per pound and twenty-five per centum ad valorem; and paper cigars and cigarettes, including wrappers, shall be subject to the same duties as are herein imposed upon cigars.

PAR. 289. Brandy and other spirits manufactured or distilled from grain or other materials, and not specially provided for in this act, two dollars and twenty-five cents per proof gallon.

SEC. 3. That for the purpose of equalizing the trade of the United States with foreign countries, and their colonies, producing and exporting to this country the following articles: * * * brandies, or other spirits manufactured or distilled from grain or other materials; * * * the President be, and he is hereby, authorized, as soon as may be after the passage of this act, and from time to time thereafter, to enter into negotiations with the governments of those countries exporting to the United States the above-mentioned articles, or any of them, with a view to the arrangement of commercial agreements in which reciprocal and equivalent concessions may be secured in favor of the products and manufactures of the United States; and whenever the government of any country, or colony, producing and exporting to the United States the above-mentioned articles, or any of them, shall enter into a commercial agreement with the United States, or make concessions in

favor of the products or manufactures thereof, which, in the judgment of the President, shall be reciprocal and equivalent, he shall be, and he is hereby, authorized and empowered to suspend, during the time of such agreement or concession, by proclamation to that effect, the imposition and collection of the duties mentioned in this act, on such article or articles so exported to the United States from such country or colony, and thereupon and thereafter the duties levied, collected, and paid upon such article or articles shall be as follows, namely:

* * * * *

Brandies, or other spirits manufactured or distilled from grain or other materials, one dollar and seventy-five cents per proof gallon.

* * * * *

ACT OF AUGUST 5, 1909 (36 Stat., 11, 83, c. 6).

SEC. 3. That nothing in this act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the eleventh day of December, nineteen hundred and two, or the provisions of the act of Congress heretofore passed for the execution of the same.

SEC. 5. That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That, except as otherwise hereinafter provided, all articles

> the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than twenty per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands, shall hereafter be admitted free of duty except rice, and except, in any fiscal year, sugar in excess of three hundred thousand gross tons, wrapper tobacco and filler tobacco when mixed or packed with more than fifteen per centum of wrapper tobacco in excess of three hundred thousand pounds, filler tobacco in excess of one million pounds, and cigars in excess of one hundred and fifty million cigars, which quantities shall be ascertained by the Secretary of the Treasury under such rules and regulations as he shall prescribe. * * *

ARGUMENT.

The Philippine Islands are neither a "foreign country" nor an "other country," within the meaning of the Cuban convention.

Counsel for appellants invoke a distinction between "foreign countries" and "other countries." They state (Brief, 23):

> Thus in Article VIII of the treaty in the principal clause the preference is given on the one hand by Cuba and on the other hand by the United States, over all like imports from "other countries," but in the proviso

> or exception thereto, it is to be noted that with respect to sugar it is provided that "no sugar the product of any other foreign country" shall be admitted at a lower rate of duty than that provided by the tariff act of the United States, approved July 24, 1897.

Both terms refer here, as do "foreign country" and "country" in tariff legislation generally, to countries other than the United States and its possessions.

A "foreign country" was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States.

> *The Ship Adventure*, 1 Brock., 235, 241; 1 Fed. Cas., 202, 204.
>
> *The Boat Eliza*, 2 Gall., 4; 8 Fed. Cas., 455, 456.
>
> *Taber* v. *United States*, 1 Story, 1; 23 Fed. Cas., 611, 613, 614.

This court has repeatedly held that upon ratification of the treaty of peace with Spain (30 Stat., 1754) the Philippines and other islands therein ceded to the United States ceased to be foreign and became territory of the United States subject to such tariff legislation as Congress might deem proper.

> *De Lima* v. *Bidwell*, 182 U. S., 1, 180, 196, 200, and other insular cases in vol. 182 of the Supreme Courts reports.
>
> *Fourteen Diamond Rings* v. *United States*, 183 U. S., 176, 178, 179, 181, 182.
>
> *United States* v. *Heinszen*, 206 U. S., 370, 379, 380.

In *Fourteen Diamond Rings* v. *The United States, supra,* Mr. Chief Justice Fuller, referring to *De Lima* v. *Bidwell,* said, at pages 178 and 179:

> Among other things, it was there said: "The theory that a country remains foreign with respect to the tariff laws until Congress has acted by embracing it within the customs union, presupposes that a country may be domestic for one purpose and foreign for another. It may undoubtedly become necessary for the adequate administration of a domestic territory to pass a special act providing the proper machinery and officers, as the President would have no authority, except under the war power, to administer it himself, but no act is necessary to make it domestic territory if once it has been ceded to the United States. * * * This theory also presupposes that territory may be held indefinitely by the United States; that it may be treated in every particular, except for tariff purposes, as domestic territory; that laws may be enacted and enforced by officers of the United States sent there for that purpose; that insurrections may be suppressed, wars carried on, revenues collected, taxes imposed; in short, that everything may be done which a government can do within its own boundaries, and yet that the territory may still remain a foreign country. That this state of things may continue for years, for a century even, but that until Congress enacts otherwise, it still remains a foreign country. To hold that this can be done as matter of law we deem to be pure judicial legislation. We find no war-

> rant for it in the Constitution or in the powers conferred upon this court. It is true the nonaction of Congress may occasion a temporary inconvenience, but it does not follow that courts of justice are authorized to remedy it by inverting the ordinary meaning of words.
>
> No reason is perceived for any different ruling as to the Philippines.

The words "foreign country" and "country" are applied indifferently to foreign countries in the customs laws.

The tariff act of 1897, *supra*, and the customs administrative act of June 10, 1890, *supra*, in force and applicable to the importations in suit from Cuba, furnish illustrations. The two terms "foreign country" and "country" are therein used in the same sense. Provisions in which the term "foreign country," or "foreign countries," is used appear in section 1, first clause, in paragraphs 415, 473, 474, and 697, and in sections 4, 16, 22, 25, and 31 of said tariff act. The word "country" without the adjective "foreign" appears in paragraphs 290, 626, and section 8. They all indisputably relate to importations from foreign countries. Occasionally the words "colony" and "dependency," separately or together, are used in connection with "country." (Pars. 195, 396, 675, secs. 3, 5.)

Section 3 and paragraph 626 of said tariff act are cited by appellants' counsel (Brief, 24, 25) as showing that Algeria, on the one hand, and India and the

Dutch East Indies on the other hand, were recognized by the Treasury Department as countries. This is not borne out by the facts. Section 3 authorizes the negotiation of reciprocal commercial agreements in respect to certain articles produced in and exported from foreign countries or their colonies. The law expressly distinguishes between countries and colonies. It was not because Algeria was regarded as a country, but because of the omission to embrace the colonies of France in the terms of the reciprocal agreement of May 30, 1898 (30 Stat., 1774), that products of Algeria were denied the privileges of said agreement. When, subsequently, products of Algeria were included, it was not by virtue of an agreement entered into with the government of that colony, but by virtue of an amendatory and additional agreement entered into with France. (Treaties, Conventions, etc., between the United States and Other Powers, 1776–1909, vol. I, p. 543.)

Paragraph 626 of said tariff act imposes countervailing duty on crude petroleum or its products "produced in any country which imposes a duty on petroleum or its products exported from the United States." India and the Dutch East Indies are possessions of Great Britain and the Netherlands, respectively, and the collection of duties on petroleum products imported therefrom did not involve recognition of them as countries apart from Great Britain and the Netherlands, rather than as colonies or dependencies of those nations.

The words "foreign country" appear in but one of the sections of the customs administrative act of June 10, 1890, *supra*, to wit, section 28. The word "country" without the adjective "foreign" appears in sections 2, 3, 4, 5, 7, 10, and 19. There can be no doubt whatever that foreign country is invariably meant by the word "country," because the customs administrative act relates only to merchandise imported from foreign countries.

This construction of the word "country" is not new. For upward of a hundred years the word, as used in customs and navigation laws, has been held by the Treasury Department to embrace all the possessions of a nation. Such construction in 1817 of section 1 of the navigation act of March 1, 1817 (3 Stat., 351, c. 31), was not only declared correct by the Circuit Court for the Southern District of New York in 1847, but held to govern the case, inasmuch as it was the contemporaneous construction of the executive department charged with the administration of the law and was corroborated by the undeviating usage of 30 years.

United States v. *The Recorder*, 1 Blatchf., 218; 27 Fed. Cas., 718, 720, 721.

Eight years later, to wit, in 1855, this court likewise approved said construction by the Secretary of the Treasury.

Stairs v. *Peaslee*, 18 How., 521, 526.

Mr. Chief Justice Taney, speaking for the court, said:

> As regards the second point certified, *the word country in the revenue laws of the United States has always been construed to embrace all the possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control.* The question was brought before the Treasury Department in 1817, and on the 29th of September in that year instructions were issued by the department, in a circular addressed to the different collectors, in which the construction above stated is given to the word. The practice of the Government has ever since conformed to this construction; *and it must be presumed that Congress, in its subsequent legislation on the subject, used the word according to its known and established interpretation.*
>
> *Apart, however, from this consideration we regard the construction of the Treasury Department as the true one.* Congress certainly could not have intended to refer to mere localities or geographical divisions without regard to the state or nation to which they belonged. For, if the word country were used in that sense, the law furnishes no certain and fixed limits to guide the appraisers in determining what are its principal markets, and it would often be difficult to decide whether the market selected by appraisers to regulate the value was actually within the limits of the country from which the exportation was made.

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This construction has been embodied as a regulation in every edition of the Customs Regulations, beginning in 1857, in the following words:

> The term "country" as used in the law is to be regarded as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control. (Cust. Reg. 1857, art. 300; Cust. Reg. 1874, art. 432; Cust. Reg. 1884, art. 499; Cust. Reg. 1892, art. 835; Cust. Reg. 1899, art. 1254; Cust. Reg. 1908, art. 873.)

The legal effect of contemporaneous and long-continued construction and practice of the executive department charged with the administration of the law has been repeatedly declared by the courts. *United States* v. *The Recorder*, and *Stairs* v. *Peaslee*, *supra*, are in point. Recent decisions of this court, sustaining such construction and practice, are:

> *United States* v. *Falk*, 204 U. S., 143, 152.
> *United States* v. *Cerecedo*, 209 U. S., 337, 339.
> *Komada* v. *United States*, 215 U. S., 392, 396.

In *Komada* v. *United States*, *supra*, Mr. Justice Brewer, referring to the Cerecedo case, *supra*, said:

> *In the decision of this case Mr. Justice White and Mr. Justice Peckham concurred solely because of the prior administrative construction.*

That the words "other countries" appearing in Article VIII of the Cuban convention, *supra*, are inapplicable to the Philippine Islands is furthermore shown by—

1. THE CONTEXT, AND
2. THE PURPOSE.

1. THE CONTEXT.

Article VIII declares that the concession made in said convention shall be "preferential in respect to all like imports from other countries." The words "imports from other countries" do not refer to goods coming into the United States from the Philippine Islands. "Import," "imports," "imported," and "importation" are used in the customs laws to refer only to merchandise brought into the United States from a foreign country the same as the correlative terms "export," "exports," "exported," and "exportation" are applied to merchandise carried out of the United States to a foreign country. This court has repeatedly so restricted their use.

Woodruff v. *Parham*, 8 Wall., 123, 131, *et seq.*

Brown v. *Houston*, 114 U. S., 622, 628, *et seq.*

Fairbank v. *United States*, 181 U. S., 283, 294.

De Lima v. *Bidwell*, 182 U. S., 1, 176.

Dooley v. *United States*, 183 U. S., 151, 154, 155.

In *Dooley* v. *United States, supra,* Mr. Justice Brown, citing cases holding that the word "import" or "imports" applies only to articles imported from foreign countries into the United States, said:

> It follows, and is the logical sequence of the case of *Woodruff* v. *Parham,* that the word "export" should be given a correlative meaning, and applied only to goods exported to a foreign country. (*Muller* v. *Baldwin,* L. R., 9, Q. B., 457.) If, then, Porto Rico be no longer a foreign country under the Dingley Act, as was held by a majority of this court in *De Lima* v. *Bidwell* (182 U. S., 1) and *Dooley* v. *United States* (182 U. S., 222), we find it impossible to say that goods carried from New York to Porto Rico can be considered as "exported" from New York within the meaning of that clause of the Constitution. If they are neither exports nor imports, they are still liable to be taxed by Congress under the ample and comprehensive authority conferred by the Constitution "to lay and collect taxes, duties, imposts, and excises." (Art. I, sec. 8.)

The words "coming into" are used in the laws imposing duties on goods coming from insular possessions of the United States in lieu of the words "imported from." The use of the two terms explicitly distinguishes merchandise coming from another country into the United States from merchandise coming from territory belonging to the United States.

This distinction was considered in 1910 by the Department of Justice in an opinion upon the ques-

tion whether the Philippine Islands are a foreign country within the meaning of section 14 of the tariff act of August 5, 1909, *supra*, prohibiting the importation from foreign countries of goods made in whole or in part by convict labor. The question was answered in the negative and the following reasons given:

> The question is whether the Philippine Islands are a "foreign country" within the meaning of said section 14. I am of the opinion that they are not. The language of section 5 clearly shows that the Philippine Islands are not a foreign country within the meaning of that section, in that it declares that upon goods "*coming into* the United States from the Philippine Islands" shall be imposed the same rates of duty as upon "like articles *imported* from foreign countries."
>
> The word "imported" in tariff laws refers to merchandise entering the United States from foreign countries, and is never used with reference to shipments from domestic territory; hence, merchandise from the Philippines is spoken of in the act as "coming into," and not as "imported" into the United States.
>
> 28 Opin. Atty. Genl., 422, 423.

The word "export" and derivatives thereof are frequently used in tariff laws without the words "foreign country" or the word "country," and they have been uniformly limited to shipments to foreign countries the same as if the words "foreign country" appeared in the law. Provisions of that nature are sections 15 and 30 of the tariff act of July 24, 1897 *supra*. Section

15 exempts from duties and internal-revenue taxes imported and domestic materials otherwise subject to taxation, provided that articles are manufactured therefrom in bonded warehouses and *exported*. Section 30 provides for the refund by way of drawback of duties paid on imported materials used in the manufacture of articles for *exportation*. Although neither term "foreign country" nor "countries" is expressed in the law, "exported" as there used has been uniformly held to mean exportation to foreign countries.

In order that such shipments might be made to the Philippine Islands, legislation was enacted expressly extending the foregoing provisions to those islands.

> Sections 6 and 7 of the act of March 8, 1902 (32 Stat., 54, 55, ch. 140).

Laws not in the customs administrative act of June 10, 1890, *supra*, necessary for the collection and protection of the customs revenue which, because relating to *imported* merchandise (T. D. 23668), had been held inapplicable to merchandise coming from said islands, were also applied by express enactment.

> Section 84, act July 1, 1902 (32 Stat., 691, 711, c. 1369).

2. THE PURPOSE.

Assuming *arguendo* that the Philippine Islands are an "other country" within the letter of Article VIII of the Cuban convention and of section 1 of the act of December 17, 1903, *supra*, the provision, nevertheless,

can not be so construed if not consonant with the purpose or intent.

This court has repeatedly held that a thing may be within the letter of the statute and yet not within the statute because not within its spirit nor within the intention of its makers.

Holy Trinity Church v. *United States*, 143 U. S., 457, 463.

Jones v. *Guaranty, etc., Co.*, 101 U. S., 622, 626.

Smythe v. *Fiske*, 23 Wall., 374, 380.

United States v. *Babbit*, 1 Black., 55, 61.

Raymond v. *Thomas*, 91 U. S., 712, 715.

Indianapolis, etc., R. Co. v. *Horst*, 93 U. S., 291, 300.

Hawaii v. *Mankichi*, 190 U. S., 197, 212.

The law governing tariff relations with the Philippine Islands is for the benefit of the inhabitants thereof and not to provide revenue for the Government of the United States. All duties collected on articles coming from those islands into the United States, as well as on articles going into those islands from the United States, were by express provisions of law, such as section 4 of the act of March 8, 1902, *supra*, directed to be "held as a separate fund and paid into the treasury of the Philippine Islands, to be used and expended for the government and benefit of said islands."

This legislation is similar to the act of April 12, 1900 (31 Stat., 77), relating to Porto Rico. Under that law, merchandise coming into the United States

from Porto Rico was subject to 15 per cent of the rates of duty imposed under the general tariff of the United States on like articles imported from foreign countries. According to appellants' contention, imports from Cuba would have been dutiable at a further reduction of 20 per cent, an advantage of 3 per cent over Porto Rican goods, which would have tended to nullify the legislation intended solely for the benefit of Porto Rico as a possession of the United States.

The far-reaching effect of the construction contended for by appellants may be directly and tersely shown by applying it to the present tariff law relating to the Philippine Islands. Section 5 of the act of August 5, 1909, *supra*, establishes free trade in products of those islands, except as to rice, and with a limitation upon the quantity of sugar, cigars, and tobacco. This was intended solely for the benefit of those islands, and a construction which would deprive the inhabitants thereof wholly or in part of those benefits would certainly be contrary to the intent of Congress. Not only would all such articles on the free list without restriction be claimed to be exempt from duty when imported from Cuba, but Cuba would have an advantage as to any excess over the maximum quantities of cigars and tobacco allowed to come in free.

This would accomplish results entirely inconsistent with the purpose of Congress, to wit, cigars and other articles would be imported from Cuba in effective competition with, and perhaps to the exclusion of,

similar products of the Philippine Islands, and articles on the free list which do not come into the United States from those islands would be imported from Cuba to the detriment of American industries.

There would be, furthermore, a great loss of revenue to the United States. Four thousand and fifty protests have already been filed by importers claiming preference for Cuban imports over Philippine products. Nine hundred and six of these protests have been examined and found to involve the refund of $831,199, an average of $917.43. Applying this average to all the protests, the amount of duties already claimed to be due under appellants' contention concerning the Philippine Islands is more than three and a half million dollars. None of the protests examined arose under the act of August 5, 1909, *supra*. The free entry of Cuban imports the same as products of the Philippine Islands under this act would naturally increase the amount involved.

Article VIII of the Cuban convention provides that the rates of duty granted to Cuba shall be "preferential in respect to all like imports from other countries," and then provides that in return therefor the concession to products of the United States shall likewise be "preferential in respect to all like imports from other countries."

The words "other countries" must mean the same thing in both clauses, and it is obvious that the latter clause can not include the Philippine Islands because the word "preferential" is predicated upon and pre-

supposes a treaty or convention with another country prejudicial to the United States. Cuba could not enter into such a treaty or convention with the Philippine Islands as a country. Their tariff relations, unlike those of colonies of certain foreign countries, referred to in appellants' brief at page 26 *et seq.*, are established and limited not by the insular government, but by act of Congress. Any agreement, therefore, in respect to importations from those islands would have to be made with the United States just the same as it would with respect to Porto Rico or Alaska. And, moreover, the special legislation for the benefit of products of the Philippine Islands coming into the United States shows that the reason for the preferential clause does not apply to them as it does to foreign countries.

Another question arising in this case and argued in Points I to IV, inclusive, of appellants' brief, is covered by No. XIII of the assignments of error (R., 15), which is as follows:

> The said court erred in sustaining said board and in not holding that the alcohol covered by the said protest is entitled to a twenty per centum preferential rate of duty over alcohol imported from France, Germany, Italy, Portugal, and Spain into the United States.

Without conceding that contention to be sound in law, the Government, as a matter of policy, applicable to this case alone and based upon reasons unnecessary

here to state, consents to a reversal of so much of the judgment of the court below as relates to the alcohol, and asks that, in view of this action, the provisions of the Cuban convention in their bearing upon that question be not construed.

We respectfully submit that the judgment of the court below should be affirmed as to the cigars.

D. FRANK LLOYD,
Assistant Attorney General.

CHARLES E. MCNABB,
Special Attorney.

APRIL, 1911.

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decisions of this court in the *Insular Cases* to the effect that Porto Rico and the Philippine Islands were not foreign countries; and within the meaning of that treaty the Philippines are not a foreign country or another country, and the reduction of tariff on articles imported from Cuba are not to be based on tariff rates on the same articles brought from the Philippine Islands.

In the absence of some qualifying phrase the word "country" in the revenue laws of the United States embrace all provinces of a state no matter how widely separated and the Philippines are a part of the United States within the meaning of the treaty with Cuba of 1903.

The duties imposed and collected on articles coming into the United States from the Philippine Islands are not covered into the treasury of the United States but are used and expended solely for the use and government of those Islands and are not to be regarded as duties on imports from foreign countries within the meaning of the treaty with Cuba of 1903.

The word "imports" is the correlative of the word "exports" and preferential rates granted to Cuba under the treaty of 1903 relate only to duties on imports from countries foreign to the United States.

The provisions of Art. VIII of the treaty with Cuba of 1903 will not be construed so as to give that country advantages over shipments coming into the United States from a part of its own territory.

157 Fed. Rep. 140, affirmed on the above points.

THIS case raises the question as to whether Cuban imports are entitled to a reduction of twenty per cent upon the rates charged on goods coming from the Philippine Islands, or only twenty per cent upon the regular tariff rates on goods imported from foreign countries.

The Tariff Act of July 24, 1897, lays a duty on cigars of $4.50 per pound and twenty-five per cent ad valorem.

The act of March 8, 1902, § 2, c. 140, 32 Stat., 54, to raise revenue for the Philippine Islands, provides that there shall be "levied, collected and paid upon all articles coming into the United States from the Philippine Archipelago the rates of duty which are required to be collected and paid upon like articles imported from foreign countries: Provided "that upon all articles the growth and

product of the Philippine Archipelago *coming into the United States from the Philippine Archipelago there shall be levied, collected and paid only seventy-five per centum of the rates of duty aforesaid.* . . . All duties and taxes collected in the United States upon articles coming from the Philippine Archipelago . . . shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the Treasury of the Philippine Islands to be used and expended for the government and benefit of said islands." (32 Stat. 54; 5 Fed. Stat. Ann. 716.)

The Commercial Convention with Cuba, proclaimed December 17, 1903 (33 Stat. 2136), declares, in Article 2, "that during the term of this convention all merchandise . . . being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States, approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted."

Article 8, p. 2140, 33 Stat. provides that "*the rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries*, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries."

In April, 1906, the convention and statutes above referred to being of force, the plaintiffs imported cigars and alcohol into the United States from Cuba. He contended that under the convention he could only be required to

pay a duty twenty per cent less than that collected on tobacco coming into the United States from Philippine Islands which paid seventy-five per cent of the regular rate under the Tariff Act of July, 1897. He also claimed that he should not be required to pay twenty per cent less than the regular tariff on alcohol, but twenty per cent less than special rates allowed on importations of alcohol from France, Germany, Italy and Portugal.

His claim being disallowed he paid, under protest, a duty of twenty per cent less than the tariff rate on cigars and alcohol. On a hearing by the Board of Appraisers his protest was overruled. That judgment was affirmed by the Circuit Court (157 Fed. Rep. 140) and the case was brought here.

Mr. Edward S. Hatch and *Mr. Walter F. Welch* for appellants:

A treaty is governed by the same rules of law as other contracts. *Foster* v. *Neilson*, 2 Pet. 253, 314; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 182; *Head Money Cases*, 112 U. S. 580.

In construing the language of treaties the courts will adopt the same general rules which are applicable in the construction of statutes, contracts and written instruments generally, in order to carry out the purpose and intention of the makers. *Tucker* v. *Alexandroff*, 183 U. S. 424; *The Amiable Isabella*, 6 Wheat. 1, 71; *United States* v. *Percheman*, 7 Pet. 51.

The court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. *The Amiable Isabella*, 6 Wheat. 1, 71.

Where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and one liberal, the latter construction is to be preferred and the interpretation which is favorable to the inferior

party should be adopted. *Worcester* v. *Georgia*, 6 Pet. 582; *Tucker* v. *Alexandroff*, 183 U. S. 424; *Shanks* v. *Dupont*, 3 Pet. 242; *Hauenstein* v. *Lynham*, 100 U. S. 483; *Geofroy* v. *Riggs*, 133 U. S. 258, 272; Vattel's Law of Nations, bk. 2, c. 17.

The American favored nation doctrine is not applicable to this case. *Bartram* v. *Robertson*, 122 U. S. 116; *Whitney* v. *Robertson*, 124 U. S. 190.

The promise of the United States for a good and valuable consideration, enacted by the Congress, becomes a rule of law enforceable by the courts. Art. VI, Par. 2, Const. U. S.; Art. III, § 2, Const.

Courts are bound to give effect to treaties in precisely the same manner that they do to the provisions of the Constitution or the laws of Congress. There is no distinction. They are equally the supreme law of the land. *United States* v. *The Peggy*, 1 Cranch, 103; *Strother* v. *Lucas*, 12 Pet. 410, 439; *Foster* v. *Neilson*, 2 Pet. 253, 314; *Nicholas* v. *United States*, 122 Fed. Rep. 892; *Boudinot* v. *United States*, 11 Wall. 616; *Whitney* v. *Robertson*, 124 U. S. 190; *Taylor* v. *Morton*, 2 Curtis, 454, 459.

Alcohol from Cuba is entitled to a twenty per centum preference over like merchandise from France, Germany and other foreign countries. Section 1, Par. 289, Tariff Act of July 24, 1897.

The Philippines are within the phrase "other countries" as used in Art. VIII of the Cuban Treaty. In the treaty and the act of Congress a careful distinction is made between "other countries" and "foreign countries." *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176; *Downs* v. *Bidwell*, 182 U. S. 244.

Algeria was an African country different from and other than France. *United States* v. *Tartar Chemical Co.*, 127 Fed. Rep. 944; T. D. 29149.

For tariff purposes the United States regarded Great Britain as one country and India as another. T. D.

FABER *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 134. Submitted April 20, 1911.—Decided May 29, 1911.

Quære and purposely not decided whether the reduction in tariff rates provided by § 2 of the treaty with Cuba of 1903 is limited to rates of duty in general tariff acts and does not apply to special rates under special agreements with other countries. *Whitney* v. *Robertson*, 124 U. S. 190.

The treaty with Cuba of 1903 was signed and proclaimed after the

27507, G. A. 6405, see also Sen. Doc. 185, 60th Cong., 1st Sess.; T. D. 27840; T. D. 27583; *Queen* v. *Commissioners of Stamps*, 18 L. J. Q. B. 201; *Campbell* v. *Hall*, 1 Cowper, 204, 211; *Otway* v. *Ramsay*, King's Bench, 1736; Sir H. Jenkins, "British Rule and Jurisdiction Beyond the Seas," 41. As to Channel Islands see Cooley's Blackstone, Vol. 1, 4th ed.; *United States* v. *The Nancy and the Caroline*, 3 Wash. C. C. 281; Daily Consular and Trade Reports, Nov. 27, 1906, No. 2729; same for Dec. 28, 1907.

By international usage, which must govern in the construction of a treaty between two nations, the Philippines must be regarded as falling within the phrase "other countries" in a commercial convention having to do with tariff rates between Cuba and the United States. T. D. 24051; T. D. 28401; Int. Rev. Circ. No. 581; *Rassmussen* v. *United States*, 197 U. S. 516; *Dorr* v. *United States*, 195 U. S. 138. Canada, India, Australia, or New Zealand, each having its own customs and revenue system, would be regarded for the purposes of a commercial convention as "other countries," as to Great Britain, although they were possessions of that country.

If the present movement for the consummation of a reciprocity treaty with Canada succeeds it ought to be made known by this court whether Cuba can be discriminated against and deprived of the benefit of her agreement with the United States, and whether numerous articles can be admitted free of duty from Canada by agreement without according to Cuba the same rights under the treaty now in existence. If Cuba can be discriminated against in any of these ways the promise of the United States in the Cuban treaty cannot mean anything to the effect that Cuban products shall have a preference over all like imports from other countries. If the United States for any reason is not willing to carry out its agreement with Cuba then there is

ample provision therein for denouncing the same, and until that time it should be carried out according to its terms.

Mr. D. Frank Lloyd, Assistant Attorney General, and *Mr. Charles E. McNabb*, for the United States:

The Philippine Islands are neither a "foreign country" nor an "other country," within the meaning of the Cuban convention.

For definitions of "foreign country" see *The Ship Adventure*, 1 Brock. 235, 241; Fed. Cas. 202, 204; *The Boat Eliza*, 2 Gall. 4; 8 Fed. Cas. 455, 456; *Taber* v. *United States*, 1 Story, 1; 23 Fed. Cas. 611, 613, 614.

Upon ratification of the treaty of peace with Spain the Philippines and other islands therein ceded to the United States ceased to be foreign and became territory of the United States subject to such tariff legislation as Congress might deem proper. *Insular Cases* in Vol. 182 U. S. Reports; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 178, 179, 181, 182; *United States* v. *Heinszen*, 206 U. S. 370, 379, 380.

The words "foreign country" appear only in § 28 of the Customs Administrative Act of June 10, 1890. The word "country" without the adjective "foreign" appears in §§ 2, 3, 4, 5, 7, 10 and 19. There can be no doubt whatever that foreign country is invariably meant by the word "country," because the Customs Administrative Act relates only to merchandise imported from foreign countries. See *United States* v. *The Recorder*, 1 Blatchf. 218; 27 Fed. Cas. 718, 720, 721; *Stairs* v. *Peaslee*, 18 How. 521, 526.

The term "country" as used in the law is to be regarded as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control. (Cust. Reg. 1857, art. 300; Cust. Reg. 1874, art. 432;

Cust. Reg. 1884, art. 499; Cust. Reg. 1892, art. 835; Cust. Reg. 1899, art. 1254; Cust. Reg. 1908, art. 873.)

The legal effect of contemporaneous and long-continued construction and practice of the executive department charged with the administration of the law has been repeatedly declared by the courts. *United States* v. *The Recorder*, and *Stairs* v. *Peaslee*, *supra*, are in point. For recent decisions of this court, sustaining such construction and practice, see: *United States* v. *Falk*, 204 U. S. 143, 152; *United States* v. *Cerecedo*, 209 U. S. 337, 339; *Komada* v. *United States*, 215 U. S. 392, 396.

The words "other countries" appearing in Art. VIII of the Cuban convention, *supra*, are inapplicable to the Philippine Islands, as is shown by the context and the purpose.

Article VIII declares that the concession made in said convention shall be "preferential in respect to all like imports from other countries." The words "imports from other countries" do not refer to goods coming into the United States from the Philippine Islands. "Import," "imports," "imported," and "importation" are used in the customs laws to refer only to merchandise brought into the United States from a foreign country the same as the correlative terms "export," "exports," "exported," and "exportation" are applied to merchandise carried out of the United States to a foreign country. *Woodruff* v. *Parham*, 8 Wall. 123, 131 *et seq.*; *Brown* v. *Houston*, 114 U. S. 622, 628 *et seq.*; *Fairbank* v. *United States*, 181 U. S. 283, 294; *De Lima* v. *Bidwell*, 182 U. S. 1, 176; *Dooley* v. *United States*, 183 U. S. 151, 154, 155.

A thing may be within the letter of the statute and yet not within the statute because not within its spirit nor within the intention of its makers. *Holy Trinity Church* v. *United States*, 143 U. S. 457, 463; *Jones* v. *Guaranty &c. Co.*, 101 U. S. 622, 626; *Smythe* v. *Fiske*, 23 Wall. 374, 380; *United States* v. *Babbit*, 1 Black, 55, 61; *Raymond* v.

Thomas, 91 U. S. 712, 715; *Indianapolis &c. R. Co.* v. *Horst*, 93 U. S. 291, 300; *Hawaii* v. *Mankichi*, 190 U. S. 197, 212.

The law governing tariff relations with the Philippine Islands is for the benefit of the inhabitants thereof and not to provide revenue for the Government of the United States.

The far-reaching effect of the construction contended for by appellants would accomplish results entirely inconsistent with the purpose of Congress, to wit, cigars and other articles would be imported from Cuba in effective competition with, and perhaps to the exclusion of, similar products of the Philippine Islands, and articles on the free list which do not come into the United States from those islands would be imported from Cuba to the detriment of American industries.

Article VIII of the Cuban convention provides that the rates of duty granted to Cuba shall be "preferential in respect to all like imports from other countries," and then provides that in return therefor the concession to products of the United States shall likewise be "preferential in respect to all like imports from other countries."

The words "other countries" must mean the same thing in both clauses, and it is obvious that the latter clause cannot include the Philippine Islands because the word "preferential" is predicated upon and pre-supposes a treaty or convention with another country prejudicial to the United States. Cuba could not enter into such a treaty or convention with the Philippine Islands as a country.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the court.

Article 2 of the Convention with Cuba provides that the products of that island shall be admitted into the

United States at a reduction of twenty per cent of the rates of duty in the Tariff of 1897, or tariff laws subsequently enacted. There is much force in the suggestion that the reduction is limited to the rates of duty in general tariff acts, and does not apply to special rates under special agreements with other countries. *Whitney* v. *Robertson*, 124 U. S. 190. This point, however, we purposely leave open and limit our consideration to the principal question discussed in the brief, whether the Philippine Islands are "another country" within the meaning of the eighth article of the Cuban Treaty, providing that the rates therein granted shall continue "preferential in respect to all like imports from other countries."

This treaty was signed and proclaimed several years after it had been decided, in the *Insular Cases*, that Porto Rico and the Philippine Islands were not foreign countries, but territory of the United States, subject to such laws as Congress might enact for their political and fiscal management. In 1901 this court, in *Fourteen Diamond Rings* v. *The United States*, 183 U. S. 176, 178, said that "the theory that a country remains foreign with respect to the tariff laws, until Congress has acted by embracing it within the Customs Union, presupposes that the country may be domestic for one purpose and foreign for another." That case and *DeLima* v. *Bidwell*, 182 U. S. 1; *United States* v. *Heinszen*, 206 U. S. 370; *Dooley* v. *United States*, 183 U. S. 151, show that, notwithstanding their geographical remoteness, the Philippines are not a foreign country, and, if so, not "another country" within the meaning of the Cuban Treaty.

There have been statutes in which the language indicated an intent to make a distinction between a country and its colonies. But in the absence of some qualifying phrase "the word country in the revenue laws of the United States has always been construed to embrace all

the possessions of a foreign State, however widely separated, which are subject to the same supreme executive and legislative control." *Stairs* v. *Peaslee*, 18 How. 521, 526. If, therefore, in our revenue laws, a colony is treated as a part of the country to which it belongs, the Philippine Islands must be treated as a part of this Nation and not as another country. It must be presumed that the words "other country" in the Cuban Treaty were used according to their known and established interpretation, *Ibid*, and did not refer to charges on shipments from territory belonging to the United States. That they were not so regarded appears from the language of the act of March 8, 1902, 32 Stat., c. 140, which studiously avoids using the words "imports," and enacts that upon articles "*coming into* the United States from the Philippine Archipelago," there shall be levied only seventy-five per cent of the rates of duty imposed on like articles imported from foreign countries. These duties, when collected, are not covered into the Treasury of the United States, but are to be used and expended solely for the use and government of the Philippine Islands.

But it is argued that even if the United States understood the Philippine Islands to be a part of this country, Cuba could not be expected to understand that the words "other countries" did not include the Philippines if a duty was in fact charged on goods coming from those islands.

But the eighth article refers to "imports"—the correlative of "exports." This necessarily related to shipments from a country which was foreign to the United States. *Pittsburgh Coal Co.* v. *Louisiana*, 156 U. S. 590, 600; *Patapsco Co.* v. *North Carolina*, 171 U. S. 345, 353. The provision that the rates granted to Cuba shall continue "preferential in respect to all like imports from other countries," does not relate to charges on shipments between places under the same flag, but to duties laid on ship-

ments—on imports—from countries which are foreign to the United States. Both in the light of our own legislation and in view of the generally accepted interpretation of the word "imports," the eighth article of the treaty cannot be construed to have been intended to give to Cuba an advantage over shipments of merchandise coming into the United States from a part of its own territory, where the collections were in part made as a means for raising revenue for the support of the government of the Philippine Islands. Cuba was given a preferential of twenty per cent over tariff rates on imports from countries which are foreign to the United States.

We make no ruling as to the duty to be charged on alcohol, because in the brief of the Government it is said that without conceding plaintiff's contention to be sound, and for reasons unnecessary to state, it consents to a reversal of so much of the judgment as relates to alcohol. It will be so ordered. The judgment of the Circuit Court as to the rate of duty on the cigars is

Affirmed.